S. HRG. 101-946

CONCESSIONS POLICY OF THE NATIONAL PARK SERVICE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

CONCESSIONS POLICY OF THE NATIONAL PARK SERVICE

JULY 25 AND 31, 1990

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
34-816 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S311-5

COMMITTEE ON ENERGY AND NATURAL RESOURCES

J. BENNETT JOHNSTON, Louisiana, *Chairman*

DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico
TIMOTHY E. WIRTH, Colorado
KENT CONRAD, North Dakota
HOWELL T. HEFLIN, Alabama
JOHN D. ROCKEFELLER IV, West Virginia
DANIEL K. AKAKA, Hawaii

JAMES A. McCLURE, Idaho
MARK O. HATFIELD, Oregon
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CONRAD BURNS, Montana
JAKE GARN, Utah
MITCH McCONNELL, Kentucky

DARYL OWEN, *Staff Director*
D. MICHAEL HARVEY, *Chief Counsel*
FRANK M. CUSHING, *Staff Director for the Minority*
GARY G. ELLSWORTH, *Chief Counsel for the Minority*

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

DALE BUMPERS, Arkansas, *Chairman*

BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico
TIMOTHY E. WIRTH, Colorado
KENT CONRAD, North Dakota
JOHN D. ROCKEFELLER IV, West Virginia

MALCOLM WALLOP, Wyoming
MARK O. HATFIELD, Oregon
CONRAD BURNS, Montana
JAKE GARN, Utah
PETE V. DOMENICI, New Mexico

J. BENNETT JOHNSTON and JAMES A. McCLURE are Ex Officio Members of the Subcommittee

THOMAS B. WILLIAMS, *Senior Professional Staff Member*
ELIZABETH J. NORCROSS, *Professional Staff Member*
J. DAVID BROOKS, *Counsel*
JIM O'TOOLE, *Professional Staff Member (Minority)*

CONTENTS

Page

Hearings:
  July 25, 1990 1
  July 31, 1990 57

WEDNESDAY, JULY 25, 1990

STATEMENTS

Bumpers, Hon. Dale, U.S. Senator from Arkansas 1
Lujan, Hon. Manuel, Secretary, Department of the Interior 19
McClure, Hon. James A., U.S. Senator from Idaho 20
Murkowski, Hon. Frank H., U.S. Senator from Alaska 16
Richards, Hon. James R., Inspector General, Department of the Interior 26
Wallop, Hon. Malcolm, U.S. Senator from Wyoming 80

TUESDAY, JULY 31, 1990

STATEMENTS

Bumpers, Hon. Dale, U.S. Senator from Arkansas 57
Frampton, George T. Jr., president, the Wilderness Society 99
Hanson, Garner B., president and general manager, National Park Concessions, Inc 85
Maughan, Rex, chairman, the Conference of National Park Concessioners 58
Murkowski, Hon. Frank H., U.S. Senator from Alaska 120
Pritchard, Paul, president, National Parks and Conservation Association 88
Wallop, Hon. Malcolm, U.S. Senator from Wyoming 57

APPENDIXES

APPENDIX I

Responses to additional questions 133

APPENDIX II

Additional material submitted for the record 169

CONCESSIONS POLICY OF THE NATIONAL PARK SERVICE

WEDNESDAY, JULY 25, 1990

U.S. Senate,
Subcommittee on Public Lands,
National Parks and Forests,
Committee on Energy and Natural Resources,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Dale Bumpers, presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator Bumpers. The purpose of today's hearing is to examine the concession policy of the National Park Service. In particular we will consider the findings of two recently released reports concerning this subject, one prepared by the Interior Department's Office of the Inspector General and the other by an Interior Department task force on Park Service concession activities. The subcommittee will also consider Secretary's Lujan's proposed revisions of the National Park Service concessions policy, which he announced last Friday.

The reports we are considering today include several major findings.

In many instances franchise fees paid to the Federal Government by the concessioners are too low and do not adequately reflect the value of doing business in a national park.

Second, the system by which franchise fees are reduced in exchange for capital improvements and other services performed by the concessioner is flawed and ought to be changed.

Third, the provisions in existing law granting an existing concessioner who has performed in a satisfactory manner a preferential right to renew his contract and provide additional services are often times anti-competitive and severely limit the opportunity for other qualified individuals to compete for Government contracts.

Fourth, the current definition of possessory interest in most concession contracts as "sound value," that is, replacement cost less observed depreciation not to exceed fair market value, results in a huge burden of payment on the Government, limits competition and makes the removal of facilities almost prohibitively expensive.

And finally, in many cases, especially at the regional and park level, Park Service personnel responsible for determining and negotiating franchise fees and other elements of concession contracts do not have the training, educational background or expertise to deal effectively with the larger concessioners.

For the most part, I agree with these and many of the other recommendations contained in these reports. As the chairman of the Senate subcommittee with jurisdiction over National Park Service concessions, I look forward to working with Secretary Lujan and others to bring about significant changes in the program.

Having said that, I come to the hearing today with somewhat mixed emotions. On the one hand, I am pleased that the Secretary has made reform of Park Service concessions a major priority and that this issue is receiving the attention in the press and elsewhere that it deserves. I am also pleased to see that we have these two excellent new reports available to us, identifying some of the problems with the existing concession system and suggested ways to fix them.

On the other hand, in the words of the great philosopher, Yogi Berra, "this is *deja vu* all over again." Most if not all the issues raised in these two reports have been identified before in numerous analysis and studies by the Congress, the GAO, and the Inspector General, the Department of Interior, and private groups. These are not new issues nor are the proposed solutions new. They have been before the Congress or the Department in one form or another for literally decades.

It is not difficult to identify problems and make recommendations for improving the concessions program. What is difficult, and what has not been done in any significant way since 1965 when the Concessions Policy Act was enacted, is to follow through on these recommendations and actually change the system. I can assure you that the recommendations of these two newest reports and the recent initiatives proposed by the Secretary will not be easy to implement.

There will be resistance to significant change from many quarters. However, with the impetus for meaning revisions in the existing system coming from the highest levels of the Department of the Interior and the National Park Service, I am hopeful that something can and will be done.

We are privileged to have two panels of distinguished witnesses today, and I welcome you all to the subcommittee.

As many of you know, the Senate is scheduled to take up the report of the Senate Ethics Committee concerning Senator Durenberger at 3:30 today. Accordingly, I must ask the witnesses as well as colleagues to make their oral remarks or opening statements, as the case may be, as brief as possible so that everybody will have a chance to speak and we will have time for questions.

Senator McClure.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator McClure. Thank you very much, Mr. Chairman. I do have an opening statement and it would be perhaps a little longer than I would desire it to be, but I do want to get a couple of considerations on the record. I think it is much better to do so at the beginning than it is to lead people to speculate.

Mr. Chairman, the original purpose of this hearing was to consider the findings and recommendations contained in the recent reports concerning the management and operation of the National Park Services concessions program and provide a dialogue with the Secretary of the Interior prior to any administrative or legislative actions.

The committee offered to work with the Secretary and offered the opportunity of the hearing to provide this forum for the exchange of views. While the purpose of this hearing is still valid, the recent actions by the Secretary and his announcement of a sweeping new policy initiative for concessions management in the national parks eliminated the opportunity for that exchange. Frankly, the action will make it extremely difficult to implement any of his proposals, however meritorious they may be. This simply is not the way for the executive branch to work with the Congress unless they are more interested in confrontation than resolution. I do not believe that this is the Secretary's desire or intent. But there are upcoming issues, which, if this same pattern is followed—that is, lack of consultation and constructive response—my response will be much less benign and conciliatory.

Mr. Chairman, as a result I will only take the Committee's time to mention a few of my concerns with one of the reports, and then direct the remainder of my remarks to the Secretary's "sweeping new policy initiative."

The Inspector General's report has led to headlines in newspapers across the Nation and more than likely was one of the precipitating factors in the Secretary's decision to drastically change the current concession system. Unfortunately, the report contains several inaccuracies. Among those, two specific statements in the Inspector General's report have been widely reported by the news media.

First, the Park Service did not receive "as much as $83 million in additional fees from 1984 through 1988 based on our analyses . . ." And then the report projects a total $109 million loss for a 5-year period through 1993.

To quote Director Ridenour in his April 12, 1990 memorandum to the Inspector General, and I do quote, "The report leaves the reader with the impression that the National Park Service has failed to collect millions of dollars that are due and owing from the concessionaires."

Mr. Ridenour then goes on to provide a reasonable, logical, and, in my opinion, acceptable explanation. Mr. Chairman, I would like to submit Mr. Ridenour's letter to the Inspector General for the record.

Senator **Bumpers**. Without objection.

[The letter follows:]

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

APR 12 1990

OFFICE OF THE DIRECTOR

MEMORANDUM

TO: Inspector General

FROM: Director s/ ~~James M. Ridenour~~

SUBJECT: Report of the Task Force on National Park Service Concessions

I am disappointed with your transmittal letter and the letter of Harold Bloom on the follow-up review of concessions management of the National Park Service. You accurately portray that I decided to await the Task Force report before replying to many of the suggestions in the audit report but you, apparently consciously, failed to mention that we feel your report leaves the reader with the impression that the National Park Service has failed to collect millions of dollars that are due and owing from the concessioners.

It is a half truth that at best is misleading, and at worst, makes for sensationalist reading. The situation as I pointed out in my letter to you is that the bulk of that money you say should be collectable is based on "old" contracts that were legally agreed to and signed many years ago--contracts that contained clauses where both sides had to mutually agree to renegotiate fees. The press is having fun with those numbers these days and will have even more fun with your numbers.

I liken the situation to the fact that many Americans signed mortgage agreements on the purchase of their homes many years ago. At the time the rate of borrowing money might have been 5%. With the bank, they signed legally binding contracts for thirty-year periods. Following the logic of your report those home buyers should have renegotiated their agreements with the banks to pay higher interest rates as interest rates went up. No one with a lick of common sense would agree that the homeowners should have paid more. Even the banks would have to say that their agreements were made in good faith.

I repeat--seven of the ten concessioners you studied had "old" contracts--ones in which the rates were set years ago and which required mutual agreements to renegotiate franchise fees. The money that MIGHT have been available to us, had the concessioners agreed to renegotiate, can hardly be called due and owing to us any more than the money my parents MIGHT have given the bank had they agreed to renegotiate should interest rates increase.

My letter in response to the draft audit clearly points out that the amount of money we MIGHT have collected is falsely portrayed by your report and will give anyone who reads the report a misleading and false set of figures. The bulk of that "mystery money" you talk about was not due and owing--as much as I would like to have it--and your report does disservice to a true and accurate portrayal of the situation.

cc: Secretary Lujan
Under Secretary Bracken
A/S Gallegos
A/S Harriman
Don Knowles
Steve Goldstein
Scott Sewell
Jack Morehead

Senator McClure. Mr. Ridenour's letter says, and I quote, "seven of the 10 concessioners you studied had old contracts, ones in which the rates were set years ago and which required mutual agreements to renegotiate franchise fees. The money that might have been available to us, had the concessioners agreed to renegotiate, can hardly be called due and owing to us. . . ." Those contracts are still valid, whether or not they are "old" and whether or not we think the fee is fair at the present time.

Basically, the Inspector General has failed to recognize the terms and conditions of various contracts which have prevented the renegotiation of fees. Right or wrong, they are still valid contracts.

Second, there is several references to the TW Services contract at Yellowstone National Park, including the fact that the Service may have unnecessarily paid $3.7 million in interest on a capital advance to construct a new park facility.

As I already have mentioned, I do not believe that the Inspector General's audit obtained all the information relevant to the issues addressed. The reference made to the Yellowstone contract failed to point out that in addition to the $3.7 million issue, purchases out of the 22 percent fund were for replacement of Government-owned personal property. What is not in the report is the fact that all of these issues are in compliance with the contract. I might note that the TW contract was the result of a "truly" competitive bid and was selected as the best offer considered beneficial to the United States.

In short, while the Inspector General's report may contain some valid recommendations, they are unfortunately overshadowed by the fact that the Inspector General's report does not appear to present all of the facts relevant to the issues stated. I believe that the majority of the issues addressed in the report are in compliance with established contractual agreements.

I am extremely disappointed that this report ever saw the light of day, much less that the Inspector General and the Secretary felt compelled to utilize the press to seek sensational headlines rather than take time to present a true and accurate portrayal of the situation.

Mr. Chairman, I would like to now address the Secretary's proposed changes in concessions policy. Notwithstanding the fact that there seems to be evidence of some intent to bypass the Appropriations Committee, the proposals to drastically change the current concession system now being considered by the Secretary of the Interior are contrary to the clear intent of the Congress and in the long term could be detrimental to the mission of the National Park Service.

In 1965, after exhaustive review and decades of successful experience with the system, Congress carefully codified a system using private enterprise to provide services in the national parks. In the 25 years since the enactment of Public Law 89-249, the system has been reviewed numerous times by Congress, executive branch task forces and private groups. There has been criticism of the system, but the result of these reviews has been a reaffirmation of its basic wisdom and efficiency.

The current proposals would virtually destroy what Congress has created by eliminating or seriously weakening the basic building blocks of the system. Those building blocks are possessory interest, preferential right of renewal, long-term contract, and reasonable franchise fees.

No one argues that franchise fees under certain circumstances should be increased, and I would support that concept, although I do think that to pick a 22 percent figure arbitrarily and without any study or basis in fact, is unconscionable.

To reformulate the remaining building blocks of the concession structure would prove in many cases to be more destructive than constructive. To the extent the Secretary's initiatives will require congressional action, I am not inclined to move forward until I am convinced that the high standards and service that Congress has set for the Park Service concessions operations will be enhanced by these proposals. To date, evidence is lacking.

Mr. Chairman, I have many questions to submit to individual witnesses for the record, the answers to which may require follow-up questions.

Mr. Chairman, I just ask at this point that a statement by Senator Wallop be included in the record.

Senator BUMPERS. Without objection.

[The prepared statement of Senator Wallop and a letter from Congressman Herger follow:]

Statement by Senator Malcolm Wallop
Subcommittee on Public Lands, National Parks and Forests
Oversight Hearing on the Management and Operation of the National Park Service's Concessions Program
July 25, 1990

Mr. Chairman, I regret the actions taken by Secretary Lujan last week which ignore the intent of Congress in regard to the concessions operations in the National Park System. It is my hope that this oversight will not occur again, and that the working relationship between the Department of the Interior and the legislative branch will improve.

Senator McClure has already spoken to the Inspector General's Report, and I shall not dwell on those issues, except to say that I do not believe that "across the board" franchise fee percentages can be set for all concession contracts. Each contract must be viewed on a park-by-park basis with consideration as to the existing conditions, term of contract, and investment requirements. The government is entitled to receive a fair fee based on its objectives and contract requirements. However, fees returned to the government should not be the primary objective. The primary objective is to maintain both the natural and cultural resource (including buildings) and infrastructure to ensure adequate and quality services and safe facilities for the park visitor.

At present, it seems that the overall system is working from both concession and Park Service points of view. There exists, in most cases, a strong commitment to quality visitor service through the partnership established between the National Park Service and the private sector concessioners. Service levels and operating standards have continued to improve since the late '70s with the implementation of the National Park Service Concession Management Program. Granted, there may be some park contracts with specific issues that should be reviewed, but that is no reason to drastically alter the overall system.

Concessions in national parks provide a service required by the park visitor. The majority of park visitors would rather stay in the park if possible. Parks were set aside for the benefit and enjoyment of the people. The concessioners are businessmen. It is their livelihood, they fully understand the need to protect the resource, for without it there is no park and no basis for that livelihood. They are committed to maintaining both the natural and cultural resources, the lodges, the stores and services that have been a part of the park system since its beginning.

I certainly believe that the National Park Service received fees as negotiated and agreed upon in existing contracts. Many of the contracts in question were negotiated 20-25 years ago and at that time, for the conditions, the contracts were probably in the best interest of the government. As established in the Concession Act (P.L. 89-249), payment of fees is based on "the probable value to the concessioner of the privileges granted..." As already mentioned and also mentioned in P.L. 89-249, "consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates."

I do know that financial analyses were used in franchise fee reviews of our concession contracts. Adjustments were made in accordance with existing conditions and investment requirements. Again, the overall goal of partnership was to address the needs of the operation, to complete building improvements programs, infrastructure improvements and other services that were required to ensure that the needs of the operation and service to the park visitor were met.

I do agree that under the old contract language, the five-year franchise fee reviews are hampered by the mutual agreement clause. However, the National Park Service is addressing this issue, and as existing contracts are renewed, this clause is being deleted or changed to the benefit of the government.

The reference to concessions average incomes before taxes being higher than industry median incomes and the general statement that profits should be based on Dunn & Bradstreet averages of 2.8% is misleading. Again, each contract must be viewed on its own merits with consideration to investment requirements, term of contract and other conditions. Profit realization must be left up to the individual business or corporation and what they are willing to accept for the risk involved.

Also, the way in which we are affecting the small businessmen and concessioners must be taken into consideration. A case in point is the National Outdoor Leadership School (NOLS) in Lander, Wyoming. They operate throughout the U.S. in wilderness on Forest Service, Bureau of Land Management and National Park System lands, and recently acquired the river permit in Dinosaur National Monument. They acquired that permit with the reasonable expectation that if they performed satisfactorily, the contract would be renewed. They have invested a substantial amount of money in the process thus far, and it would be grossly unfair to change the rules, pulling the rug out from under them and thus substantially enlarging the applicant pool, subsequently putting them out of business.

The effect of franchise fees is difficult to quantify for NOLS. They provide experience and the opportunity for individuals to utilize the resource through the NOLS program. They differ from many concessioners in their unique mission and commitment to outdoor education and conservation. Unlike some of the larger concessioners, NOLS, as with other river outfitters, does not generate alternative sources of financial return to augment the franchise fee paid, and thus are possibly not as likely to be able to argue for a "no change" position with regard to the current 3.5% franchise fee.

Another aspect of the NOLS operation is that they do not have the ability to provide improvements to Park Service land. As a result, a profit cap does not seem to apply because NOLS cannot turn the excess dollars into improvements.

In comparing national park contracts to other industry contracts, such as airports, state parks, stadiums, fees paid by the concessioners are generally higher. In these cases, operational requirements and pricing are not as controlled as they are under national park contracts. A standard of comparability was established through P.L. 89-249 to ensure reasonableness of rates charged to the park visitor. If higher fees are required, then the government involvement in controlling prices should be eliminated and the cost of the contract would establish the prices charged for rooms, meals and other services inside national parks. Also, concession contracts in the outside industry that pay higher fees generally require little or no investment and their pricing reflects the higher fees. Park operations, due to their uniqueness, cannot be compared across the board to airport, stadium or arena operations.

In general, I believe both the National Park Service and concession operations are receiving unwarranted criticism. Granted, there may be some concession contracts that need to be reviewed and changed when renegotiated. I believe that the National Park Service is addressing theses issues when the opportunity for review arises.

Mr. Chairman, I would like to address a few areas of major concern I have with the Secretary's new proposal.

In regard to possessory interest, P.L. 89-249 provides that the Secretary of the Interior shall grant a possessory interest to concessioners in buildings or facilities which they buy or build. This concept was developed because it was impossible for concessioners to obtain long-term financing or investment in facilities they could not own in fee. With possessory interest concessioners have been able to invest the tens of millions which the National Park Service has required them to.

The proposals could eliminate the possessory interest concept through government acquisition. This would require the expenditure of hundreds of millions of dollars to a counter productive result. Government ownership of the facilities after this enormous expenditure, I believe, would bring about a less efficient operation, the need for continuing government investment over the years and loss of tax revenues to local government. For example, Yosemite Park & Curry Co., is by far the largest taxpayer in Mariposa County, California, paying some 28 percent of the taxes. While some states own facilities, the requirements of construction and operation are not as stringent as those in national parks.

Regarding preferential right of renewal, Congress provided that at the end of its contract, a satisfactory concessioner shall be entitled to a preferential right of renewal, generally defined as a right to match a competing offer. This provision has encouraged good operation, long-term investment, high quality maintenance and stability of work force. Without it, many concessioners would face even more uncertainty than that which comes with operating a seasonal business in a remote location.

The proposals would dilute or eliminate this right to encourage competition. Congress confirmed in 1965 the long-standing National Park Service policy of having one major concessioner in each park who is regulated in detail as to price, services offered and method of operation. Without some assurance of protection against cutthroat competition which might offer higher return to the government at the cost of service to the visitor or protection of the resource, incumbent concessioners would find it difficult to invest in quality service, maintenance and personnel.

Regarding long-term contracts, the Congress has provided that the National Park Service may allow concessioners to have contracts up to 30 years. These terms encourage investment, continuity of service, and care for the resource.

The proposal talks of 5 year contracts. In a few circumstances, this term may be appropriate, but where a large investment is required or where a very large operation is involved, Congress has found that it is in the public interest to encourage long-term investment, continuity of ownership, and job security, health insurance coverage, and pension benefit protection to rank and file employees of the concessioner.

Regarding franchise fees, Congress wisely provided that the amount of the franchise fee is to be subordinate to the protection of the resource and service to the visitor. As franchise fees do not go to the National Park Service but to the general receipts of the Treasury, they do not help the parks.

The proposals envision a drastic increase in the amount of the fees to something like 20 times their current levels. This scheme is clearly contrary to what the Congress had in mind when it provided that the Secretary shall treat the concessioner in such a way as to allow them to make a fair profit. Franchise fees at this level would make a fair profit impossible and would certainly result in shoddy services and rundown facilities.

Regarding the protection of the resource and service to the visitor, Congress did not create this system out of concern for the concessioners' welfare. It found that by providing for possessory interest, preferential right of renewal, long-term contracts, and reasonable fees, the basic missions of the National Park Service to protect the resource and provide services to the visitor would be enhanced. The proposals would endanger these missions.

Regarding protection of the resource, a stable concessioner with incentive to make long-term investments and plan for continuity of operation helps to protect the resource. A long-term investor is able to plan, design and build environmentally sensitive facilities as directed by the National Park Service. Further, he is able to operate and maintain these facilities with long-term tenure in mind and thus in accord with the environmental sensitivity necessary in national parks.

In contrast, a concessioner with no possessory interest, no preferential right, a short-term contract and a high fee will be forced to cut corners on design, construction, operation, and maintenance. Necessarily, he will almost always operate for the short-term with as little deference to the resource as is possible.

The same factors are true to providing service to the visitor. A concessioner looking to the long-term will provide high quality service at reasonable prices. Further, he will be able to enhance the visitor experience by making the concessioner facilities an extension of the park. He will be able to provide such additional free services as interpretive lectures, guided hikes, and other extensions of the park.

It may be argued that resource protection and service to the visitor could be achieved by National Park Service regulation, but in fact the current partnership system has proven to work far better than any regulatory scheme. Thus, the system which Congress created has worked well and should not be destroyed by whim.

WALLY HERGER
2D DISTRICT CALIFORNIA

PLEASE REPLY TO

☐ WASHINGTON OFFICE
1108 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3076

DISTRICT OFFICES

☐ 20 DECLARATION DR., SUITE B
CHICO, CA 95926
(916) 893-8363

☐ 2400 WASHINGTON AVE., SUITE 410
REDDING, CA 96001
(916) 241-9588
(916) 241-9473

☐ 951 LIVE OAK BLVD., SUITE 10
YUBA CITY, CA 95991
(916) 673-1917

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON AGRICULTURE

COMMITTEE ON
MERCHANT MARINE AND
FISHERIES

SELECT COMMITTEE
ON NARCOTICS
ABUSE AND CONTROL

SELECT COMMITTEE
ON HUNGER

July 12, 1990

Senator Dale Bumpers
Chairman
United States Senate
Subcommittee On Public Lands,
National Parks And Forests
Washington, D.C. 20510-6158

Dear Senator Bumpers:

I am writing with regard to federal policies governing the operation of concessions in our National Park System.

I am concerned about several policy changes to Public Law 89-249 which have been discussed recently, such as higher franchise fees, the discontinuing of possessory interest for concessionaires, and also discontinuing or redefining the preferential right of renewal. I believe that these provisions have generally proven successful over the years in providing the American public with quality services in our National Parks and ensuring preservation of federal resources, and would urge caution in the consideration of any policy changes concerning these issues.

I am aware that an oversight hearing was held recently in the House Interior Subcommittee on National Parks and Public Lands on this issue, and also that the General Accounting Office has been requested to compile a report and possibly recommend changes in current federal policy. As I have a particular interest in this issue, I look forward to working with you and other members of the Senate Energy and Natural Resources Committee on this issue in the future.

Thank you for your consideration of my views.

Sincerely,

Wally

WALLY HERGER
Member of Congress

WH/aa

Senator McClure. I want to remind everyone that we have a tremendous backlog of requirements for public services in National Park units. The Congress of the United States has not been able to fund those requirements, no matter how we have tried. You know that and I know that, and we have fought for additional money. Over the last 25 years we have had the greatest expansion of the Park Service System in the history of this country, and I am proud of that expansion.

We have acquired, we have created, we have stimulated the desire for and met that desire by creation of dozens of new units, all of which require some degree of public service. We do not have enough money. We know we do not have enough money to immediately provide the services promised to the sponsors of those bills or those units.

Local communities have been waiting now for decades to see the economic activity brought about as the result of the installation of public service in National Park units. None of us likes that. I do not like that. We would like to be able to say, all right, Park Service, here is some money to go in and do the job, provide the services to the public that the public has a right to expect and that we want to give. We do not have a prayer of meeting that need in the next decade. I do not think there is anybody in this room who believes we have.

If we are going to expand the public services, we must depend upon a system of concessioners. They have got to have predictable policy so that they can make their business investment decisions. If, as a matter of fact, there are old contracts out there that are too generous, let us deal with that question. But let us, for heaven's sake, not throw the baby out with the bath water as we try to find some reason to criticize some individual contracts in the past, recognizing that there are contracts, recognizing that there are vested rights under those contracts.

But still we must have a system that encourages—not just allows, but encourages—private enterprise to step in and pick up some of the load of providing service to the public. Otherwise, the public is not going to get the service.

Some people seem to have the idea that all we have to do is just avoid any concessioner contracts and we will have all the services the public wants. Now, demagogues can say that, liars might repeat it. But anybody who knows the truth knows that is not going to happen. So, we do have concessioners, we do respect the service that they give. The public has a right to expect that that is done on reasonable terms, with honesty to the taxpayers and their interest in these national parks.

But let us do not forget the history of how we got here and repeat some of the mistakes of the past as we scrap a system that in the main has worked well, and I think most of us will say, in the main has worked well. I hope we, growing out of this, can evolve towards a policy that will avoid errors of the past on all sides. I look forward to working with this committee in attempting to do so.

Thank you, Mr. Chairman.

Senator **Bumpers**. Senator McClure told me on the way back from the floor that he did not have much interest in this issue, and I am sure glad he did not.

[Laughter.]

Senator **Bumpers**. Senator Murkowski, do you have an opening statement?

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator **Murkowski**. I have a brief opening statement. Let me thank you for holding this hearing. I am pleased to hear my colleague from Idaho does not have any strong opinions of this matter either. I probably join him in his attitude at least from the start.

Mr. Secretary, I commend you for your efforts to address the concession program, specially because our State is a prime candidate for new concessions. As you know, we have 13 national parks in our State, for a grand total of 50.5 million acres. That is 13 percent of our entire State acreage in national parks. More importantly, 66 percent of your National Park system is in our State. Sometimes we wonder how much is enough, but nevertheless——

We have the three largest parks, as you know, Wrangell-St. Elais at 13 million acres, Gates of the Arctic at 8 million acres, and Noatak National Preserve at 6.5 million acres. We have had discussions, as you might recall, that the number of Park Service personnel entering and exiting three of those parks—namely Gates of the Arctic, St. Elais, and Noatak—exceed the number of visitors. So, one can wonder how much management is necessary and how much of your priorities necessarily have to be addressed to the management of those parks, when indeed the entry and exit of Park Service personnel exceeds visitors.

We just leave you with that thought, again, because as you address your priorities, why, we hope that there can be some shifting as a consequence of that harsh reality.

Wrangell-St. Elais has one small visitor center that is not even located within the park. Gates of the Arctic visitor center is located in Fairbanks, over 100 miles away from the park. Noatak has a visitor center located in Kotzebue, over 50 miles away from the park. One might imagine a visitor center for Yosemite to be located in San Francisco.

Denali National Park is a 6-million-acre park, about the size of the State of Maryland. We have limited Federal and private facilities there, and have very limited access for our visitors. At Denali National Park, we now have one 90-mile road and one 140-bed hotel. Last year we had 600,000 visitors. That exceeds the population of the State of Alaska by about 70,000. The State's population is about 530,000; 600,000 visitors would fill the existing hotel for 11 years. The Park Service has no plan addressed to meet the required destination of Denali as the number one tourist attraction in the State of Alaska. They are more interested in limiting access on the existing road than they are addressing a plan to make the park accessible.

We do not want Denali to have a half a dozen roads. We have only got one road, and they are restricting access on that road and they have no plans for any relief. Well, I think Denali is evidence itself that a number of visitors are desirous of going there, that it does provide opportunities for expanding these concessions.

The possibilities are really endless. A new road or elevated trains, some new technology, the availability of the historic mining district of Kantishna outside the park could take care of some of the relief, but the Park Service is absolutely blind-sided, and among the internal discussions within the Park Service is the feeling that we do not want this to turn into Yosemite. They want to actually limit visitors. I think you have to recognize that there has got to be a balance.

There is also a great potential at Glacier Bay National Park. Glacier Bay is a relatively remote area of Alaska and the only viable means for the large number of visitors to get there is by cruise ship. Now, the footprint left by cruise ship passengers, is probably a candy bar over the side. I cannot imagine a better way to see a National Park.

Yet, there are rules that are tailored to restrict access, not to further it. In Glacier Bay, highly questionable information about whales is based on a 6th grade biology teacher's study 10 years ago, and between the Park Service and the National Marine Fisheries Service, you cannot get from here to there simply because no one in the Park Service is willing to make the decision that this Park should be opened to visitors on cruise ships.

There are two channels in the park, and one cruise ship will not see another one if the ships are scheduled that way. But they are not scheduled that way because there is a fear of whales. If you want to see the whales, you go clear across to the Chichagof shore, outside the Park, and that is where the whales are. You ask anybody that wants to see whales, that is where you go.

We have become very, very frustrated with the policies up there, Mr. Secretary, as you note by some of my meanderings. I could go into the whale issue at great length. However, I think it is fair to say that Glacier Bay encompasses 1000 square miles of water and several hundred miles of twisting coastline, and we allow, on a schedule, less than one ship a day during the tourist season, which is about 3 months of the year.

Well, we have a unique situation in Alaska: vast park lands full of natural wonders but no way to get there. A few people who can avoid the high price of chartering a float plane can get in, but it is certainly not available to the average American and it is not available to the average American who wants to backpack, because you have to fly in to begin your backpacking experience.

Alaska needs Park Service access. We need the imagination of a Park Service that is challenged to address the growing needs of the extraordinary opportunities you have in Alaska to do it right, and that is what we are asking, that there be a visionary plan to take care of the increasing needs. We want to see good concession management programs that will provide quality visitor services to showcase our State. I have had the pleasure of meeting with Mr. Ridenour on several occasions about concession management and visitors' access, and I have asked him to put together a task force to address the unique, expanding and growing needs.

Secretary Lujan has suggested reinvesting concession fees back into the Park. That may have merit. I certainly support equitable concession fees which could be applied directly back to the Park. However, I am concerned that revenues generated in this manner would be insufficient to undertake major capital projects within Alaska parks.

Mr. Chairman, Denali, which is the Mount McKinley has a franchise fee of 0.75 percent a year, and the return to the Government is $55,000 based on visitors of 600,000. How that could possibly correlate with Glacier Bay, which has a contract of 3.4 percent of the gross per year and is returning to the Federal Government between $8,300 and $10,000. And Katmai, which is at 1.2 percent a year, and the Federal Government receives approximately $10,000.

We cannot explain how those figures were negotiated, what they cover, why the difference based on the tremendous inequity in the sense of the number of visitors. What we need is a written justification of how these fees were determined from the standpoint of the franchise fee, how the net to the Government is calculated. And it would seem that there is some need, Mr. Chairman, of some uniformity in this process so that we can explain to people who want to know about the opportunities to bid on concessions when they do come up, whether the bids do come up, whether they are tied in from the standpoint of having the assurance that if you put in a capital improvement you are going to have the concession until it is amortized.

There are many, many questions and the excuse that the Park Service does not have the expertise to enter into this type of business is something I do not buy. I believe they do not have the expertise, but I believe they do have the obligation to get the expertise, because they are doing a major business and the taxpayer is entitled to a reasonable explanation of how these fees are basically set and the rationale behind them. And there should be an incentive to ensure that a concessioner does the very best, and there should be people behind who want to pick up that franchise on a competitive basis. And everybody ought to be able to understand the game rules.

Thank you very much, Mr. Chairman.

Senator BUMPERS. Thank you, Senator Murkowski. I might point out that that is precisely why we are here today.

Mr. Secretary, let me make this one statement before you commence. As I said in my opening statement, the Ethics Committee resolution on Senator Durenberger will be before the Senate at 3:30 p.m. The majority leader and the minority leader have both requested that all Senators be in their seats during the discussion of the resolution. And so, we have no choice but to leave here by 3:30 p.m.

That probably it is not going to give us enough time to get to the next panel. We will, I promise you, schedule a hearing as quickly as possible to hear this panel and possibly further hearings from the Department. But in any event, we will obviously not be able to get through to everybody today. I apologize also for the two votes which delayed the opening of the hearing.

With that, Mr. Ridenour, Mr. Secretary, and Inspector General, we are pleased to have you with us.

Mr. Secretary, please begin your testimony.

STATEMENT OF HON. MANUEL LUJAN, SECRETARY, DEPARTMENT OF THE INTERIOR

Secretary LUJAN. Thank you very much, Mr. Chairman. I appreciate the opportunity to provide the subcommittee with the views of the Department on the Concession Management Program within the National Park Service.

As you know, I have been personally interested in the Concession Management Program since my arrival at Interior. I asked the Inspector General's office to review that program. I also asked the Director of the National Park Service to convene a task force to develop a Park Service position on concession management to ensure a balanced view and consensus position. I met with concessioners on a number of occasions to discuss some of the findings and some of the ideas that were suggested.

On July 19, I announced a sweeping new policy initiative for concession management of the national parks. It will be based on the following principles, Mr. Chairman. First is to protect the park natural and historic resources above all other goals; provide quality visitor services at reasonable cost; provide concessioners with a reasonable opportunity for profit; provide for a fair return on fees, investments, and services to the Federal Government.

This new policy is designed to increase revenues, of course, to the parks; improve service to the park visitor; and ensure a fair return on concession investments. I am recommending the use of private-sector professionals to assist the National Park Service. In addition, significant effort will be made to upgrade the business skills of the National Park Service employees on concession management. We must be totally accountable to the American people for the protection of the National Park System and for fairness and equity in our concessioner relationships.

I have recommended the following, specific policy directions, Mr. Chairman.

On franchise fees: franchise fees as a part of the total return to the Government are expected to be increased, consistent with the current National Park Service concession methodology.

Second, charges for concessioner use of park facilities: National Park Service should develop and implement policies which require fair and equitable payment for use of park facilities.

Preferential right of renewal: preference rights to renew contracts will be redefined to the extent allowed under existing law to enhance competition in contract renewals.

Preferential right to additional services: the National Park Service will grant preferential rights for additional services only when compelling circumstances indicate it is in the public interest to do so.

Possessory interest: improvements paid for by concessioners in exchange for direct franchise fee reductions—and I might mention again, an exchange for direct franchise fee reductions—should not create a possessory interest.

Contract transfers: all transfers proposed during the life of the contract must be approved by the National Park Service Director's Office.

Length of contract: contracts of more than 5 years must be approved by the Director.

Park facility funding: the use of informal arrangements with concessioners for facility maintenance and rehabilitation will be eliminated.

Decisionmaking and negotiations: the Director will approve all contracts where the expected annual gross revenues exceed $1 million. Approval authority for contracts exceeding $100,000 will be in the National Park Service Washington Office.

Accountability and internal controls: the National Park Service should reallocate priorities for fiscal year 1991 to enhance its capability for standard accounting and management information services.

Improved National Park Service training, education, and staffing: within current funding levels and the President's budget, funds would be identified as soon as possible to develop a recruitment program for employees with education, experience, and interest in concessions management.

Mr. Chairman, concessions management employees at both entry and upper levels should receive training and perhaps certification in subjects relating to all phases of concessions operations. I have directed the Park Service to develop an action plan for improved concessions management, including specific acts with starting and ending dates. The report is to be completed by September 7, 1990.

I recognize these changes are controversial, but I believe we should manage the concessioner program—the concessioners, who provide a valuable service to park users—in the most fiscally sound manner possible. Toward that end, the American taxpayer should get a better return on their investment. There certainly is room for discussion on how best to deal with these matters, and I look forward to working with this subcommittee in addressing these issues.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Lujan follows:]

STATEMENT OF MANUEL LUJAN, SECRETARY, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, CONCERNING CONCESSIONS MANAGEMENT WITHIN THE NATIONAL PARK SERVICE.

JULY 25, 1990

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on the Concessions Management Program within the National Park Service.

As you know, I have been personally interested in the Concessions Management Program within the National Park Service since my arrival at Interior. Let me trace some of my recent actions in this area.

In December I asked the Inspector General's Office to review the Concessions Management Program. At that time, I also asked the Director of the National Park Service to convene a task force to develop a National Park Service position on concessions management. I am now in receipt of both of these documents and have reviewed them closely. Substantial efforts have gone into both reviews. In addition, to ensure a balanced view and consensus position, I have met with the concessioners on a number of occasions to discuss some of the findings and ideas suggested.

Based on the above actions, on July 19 I announced a sweeping new policy initiative for concession management in the National Parks. This new policy will be based on the following principles.

1. Protect Park natural and historic resources, above all other goals;

2. Provide quality visitor services at reasonable cost;

3. Provide concessioners with a reasonable opportunity for profit;

4. Provide for a fair return on fees, investments, and services to the Government;

5. Promote competition in concession contracting.

This new policy is designed to increase revenues to the parks, improve service to the park visitor and ensure a fair return on concessioners' investments. The new policy will allow for higher franchise fees in some parks as concession contracts come up for renewal. In some cases, franchise fees now below five percent of gross revenues could be raised to 22 percent. Major policy reform should give the National Park Service the ability to deal with concessioners, large and small, in a thoroughly professional and business-like manner. We want to benefit from the initiative and expertise of the American free enterprise system.

I am recommending the use of private sector professionals to assist the National Park Service in analyzing financial information statements, appraisals, performance standards and making other business-related assessments. In addition, significant efforts will be made to upgrade the business skills of the National Park Service employees working in concessions management.

Above all, we must be totally accountable to the American people for the protection of the National Park System and provide for fairness and equity in our relationships with concessioners.

I have recommended the following specific policy directions:

1. **FRANCHISE FEES**

Franchise fees, as a part of the total return to the Government, are expected to be increased, consistent with the current National Park Service concessions methodology. Franchise fees, when combined with other contractually obligated returns to the National Park Service, should represent the approximate level of receipts needed to attract investors and still provide adequate services.

Recent experience suggests that approximately 22 percent of expected gross revenue may be an appropriate standard in some instances. Where favorable circumstances exist--such as the use of Government structures--fees or equivalent benefits should be higher. Fees will be lower for concessions that are only marginally profitable.

Other factors being equal, the concessioner's profit should be approximately equal to the median returns exhibited by similar industries.

2. **CHARGES FOR CONCESSIONER USE OF PARK FACILITIES** .

The National Park Service should develop and implement policies which require concessioners to make a fair and equitable payment for the use of park facilities. To the extent possible, these payments should be used for maintenance and improvements to the parks.

3. PREFERENTIAL RIGHT OF RENEWAL

Preference rights to renew contracts will be redefined to the extent allowed under existing law to enhance competition in contract renewals.

The opportunity to bid on contracts up for renewal will be widely advertised. Incumbent concessioners must submit offers which meet minimal National Park Service requirements. Those who fail to do so will be disqualified and the permit or contract will be awarded to the best responsive offer.

4. PREFERENTIAL RIGHT TO ADDITIONAL SERVICES

The National Park Service will grant preferential rights for additional services only when compelling circumstances indicate it is in the public interest to do so. Any such grant must be approved by the National Park Service Director.

5. POSSESSORY INTEREST

Improvements paid for by concessioners in exchange for direct franchise fee reductions should not create a possessory interest. Future concessions contracts should provide for book value compensation for new improvements and should provide that this value may not be increased when the contract is transferred.

6. CONTRACT TRANSFERS

All transfers proposed during the life of a contract must be approved by the National Park Service Director's Office. Transfers resulting in windfall profits will not be approved.

7. CONTRACT LENGTH

Contracts of more than five years must be approved by the Director. The use of mutual agreement clauses relating to changes in fees should be eliminated.

8. PARK FACILITY FUNDING

The Department's Office of Congressional and Legislative Affairs will expedite review of proposed legislation to modify visitor facility funding. The use of informal arrangements with concessioners for facility maintenance and rehabilitation will be eliminated. It will be replaced by a method that captures and considers concessioner investment in park facilities in calculating the total return to the Government.

9. DECISION MAKING AND NEGOTIATIONS

The Director will approve all contracts where the expected annual gross revenue exceeds $1 million. Approval authority for contracts exceeding $100,000 will be approved by the National Park Service Washington Office.

I have recommended the use of private sector professionals to assist National Park Service concessions staff in such areas as assessing prospective concessioner financial statements, performing appraisals, reviewing concessioner performance and assisting in contract negotiations.

10. ACCOUNTABILITY AND INTERNAL CONTROLS

In order to accomplish this, the National Park Service should be able to account for all forms of concessioner payments to the Government. The National Park Service should reallocate priorities for FY 1991 to enhance its capabilities for standard accounting and management information systems.

11. IMPROVE NATIONAL PARK SERVICE TRAINING, EDUCATION AND STAFFING

Within current funding levels and the President's budget, funds should be identified as soon as possible to develop a recruitment program to hire employees with education, appropriate experience and interest in concessions management. Wherever possible, the National Park Service should not assign concession management responsibilities as secondary duties to employees whose primary jobs are ranger, administrative officer, etc.

Concessions management employees at both entry and upper levels should receive training and perhaps certification in subjects relating to all phases of concessions operations. The National Park Service should consider an internship program to give employees exposure to the civilian hospitality sector.

OTHER PROPOSED ACTIONS

The National Park Service will consult with the Department's Solicitor for prompt implementation of the above programs and to initiate such regulatory changes as are appropriate and necessary while assuring an adequate opportunity for public comment.

In addition the National Park Service will:

- Advise me on which recommendations, if any, from the National Park Service Task Force and Interior Inspector General's report which are not addressed above will be adopted.
- Advise me of the reasons for not adopting any of the recommendations of either report.
- Develop and implement a plan for increasing minority and women-owned businesses operating the National Park Service concessions.

I have directed the National Park Service to develop an action plan for improving concessions management, including specific actions with starting and ending dates. The report is to be completed by September 7, 1990, and monthly status reports are to be submitted until all planned actions are completed.

I recognize these changes are controversial, but I believe we should manage the concessioners, who provide a valuable service to park users, in the most fiscally sound manner possible. Toward that end, the American taxpayer should get a better return on their investment. There certainly is room for discussion on how best to deal with these matters and I look forward to working with this subcommittee in addressing these issues.

I sincerely thank you for your interest and will be happy to answer any questions at this time.

Senator BUMPERS. Mr. Secretary, at this point I would like to ask the Inspector General to testify also. Then we will direct questions to both of you. Is that satisfactory?

Secretary LUJAN. Fine

STATEMENT OF HON. JAMES R. RICHARDS, INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR

Mr. Richards: Thank you, Mr. Chairman. I will try to summarize my statement rather briefly.

I think all has been said about it so far that needs to be said. If I may just touch on a few areas, I will do that.

Our audit, as the Secretary said, was initiated at the special request of the Secretary. Since there was a short turn-around that the Secretary wanted, to have both his Park Service task force report and our report, we selected a sufficient number of concessioners, starting at the top of the gross receipts, so that we would have about 50 percent of the gross receipts covered by the audit. That is why there were only 14 of the largest concessioners included in the audit. As you know, there are around 500 concessioners, some of them very small.

The report, I think, speaks for itself. And I regret that Senator McClure did not read it that way. I say, in deference to you, Senator, in all good faith, all of our audit reports are sent to all of our oversight congressional committees, including this one. They are then, shortly thereafter, if they do not contain proprietary or other confidential information, released to the press routinely.

Of course, some reports draw more attention than others. We all know that. And this one, of course, drew considerable publicity. But I must remind the committee that before the report was released, the concessioners, as is their right, went to court and got a temporary restraining order against the release of certain information. Then we were immediately faced with the problem of having a hearing in the other body, before their subcommittee that is complementary to this one. And then, after that, the report, as redacted by the court order, was released to the public.

As far as the wording of the report, what we were trying to point out was that, as a follow-up to our 1986 report, we recommended to the Park Service that they use their own guidance to negotiate additional fees, which is of course authorized by the 1965 act. It says that appropriate provisions shall be made for reconsideration of franchise fees at least every 5 years unless the contract is for a lesser period of time. And so, we were taking the Park Service to task, if you will, for not using their own guidance of their headquarters in the financial analyses that they prepared for the guidance of the field.

The Park Service, being a highly decentralized organization, has delegated the authority to renegotiate these fees to the field. Ironically, the few people who have backgrounds in financial analysis and that type of thing, or accounting, are all in headquarters. So, basically, the headquarters people were doing the financial analyses, passing them along to the regions, who were then basically abandoning those recommendations and instead opting, understandably, for capital improvement plans or other types of things in lieu of raising the franchise fee. So that is how the figures came to be. They are explained in the audit report.

In addition, I wish to emphasize that our figures were based upon a comparison of the Dun and Bradstreet industry norms, which is the Park Service guidance, and the combined profits before taxes or income before taxes of the 14 large concessioners. And if you will note on page 27 of the appendix, the 14 largest concessioners had a combined actual income before taxes of $33.2 million, whereas, Dun and Bradstreet median incomes of similar business had actual income of $18.8 million. So the concessioners had about twice the actual income before taxes of the D&B median income of similar businesses.

In addition, the profitability of the concessioners has always been good. For example, we point out in the report that the net income for the 14 larger contracts reviewed increased from $12.9 million to $27.9 million, a 116 percent increase, while their combined gross receipts increased from $191.6 million to $268 million, or a 40 percent increase in the 5 years previous from 1984 through 1988. So net income of the concessioners increased almost three times as much as their gross revenues. This, of course, is contained in the report.

Senator McClure. Could I interrupt at that point?

Senator Bumpers. Surely.

Senator McClure. What is the significance of the fact that net revenues rose more rapidly than gross receipts? Would you not expect that to happen?

Mr. Richards. Yes, you would. Any business person would expect it to happen.

What I was mentioning that for is that, because income is increasing, it seems to me like—there is a provision for renegotiation at least once every 5 years—the Park Service should say, look, okay, you are doing well. How about giving a little more of that to the United States? That was the point of saying that.

Senator McClure. But the very fact that as revenues increase, the margins increase and that at the margin, profits rise very rapidly when you get above the point where you are recovering expenses. Is that correct?

Mr. Richards. Well, we also took into account, Senator, as I mentioned, that the D&B median incomes for similar businesses were about half of the income for the concessioners.

Senator McClure. I just want to focus on that for a moment because you recite precise percentages, which seem to me to be more misleading than helpful in determining what the answer to—whether there is a question or whether they are distinguishable.

Mr. Richards. These are taken from the actual financial statements that are filed with the Park Service.

Senator McClure. Let us assume for a moment that somebody's revenues were $100,000 and their costs were $100,000 and they managed to raise their revenues to $110,000 and their costs stayed at $100,000. Their revenues would have increased by 10 percent and their profits would have increased by infinity.

Mr. Richards. We were taking a 5-year average, not 1 year.

Senator McClure. I do not care whether it is 1 year or 10 years. Let us use another one. Suppose that same company with $100,000 of gross revenues had a $5,000 profit out of that $100,000 gross revenue. They raise their revenues to $105,000 and their cost stayed $95,000. Their revenues would have increased by 5 percent; their profits would have doubled.

Mr. RICHARDS. Yes.

Senator MCCLURE. To make a big point out of that seems to me to be either misleading or grossly naive about what return on investment means.

Mr. RICHARDS. To make a point of it was that the Park Service guidance is the D&B median income. And we were saying to the Park Service you should negotiate on that basis.

Senator BUMPERS. Go ahead, Mr. Richards.

Mr. RICHARDS. Anyway, as a result of Park Service acceptance of capital improvement in lieu of increased franchise fees, revenues going to the U.S. Treasury have been reduced. Smaller parks which cannot afford to establish capital accounts must compete for limited appropriated dollars to accomplish maintenance and repair of park facilities, while the larger and more popular parks, such as Yosemite, Yellow Stone, Grand Canyon, and Glen Canyon can obtain a portion of the franchise fees to improve their facilities.

I say this to point out to the Secretary and to the committee that if we continue to go for these capital improvement projects in lieu of franchise fees, we may create a two-tiered system, the haves and the have-nots, with the large popular parks having most of the revenue and most of the money to have capital improvements. The smaller parks that sometimes do not have any revenue at all, or very little revenue, have to scramble for appropriated dollars. It gets to be an unfair thing for the smaller parks. I ask the committee to take that into consideration in considering these proposals.

Finally, the lack of competition with competing these contracts when they expire is such that basically there is no competition when a contract expires. In 28 of the last 29 contracts that have expired, the existing concessioner has gotten the contract. There have been no substantial bids that have competed with them.

On the other hand, when there are negotiated buy-outs of these contracts, and there were 22 of those in 1988 alone, the value—where they are negotiated buy-outs, of course, there all of the facts and figures of the potential seller and the potential buyer are factored in, and there are sales that show there is tremendous value in the existence of the contract with the covenant not to compete and with the reduced franchise fees. We give an example in my testimony of that, and I will not bother you with it further.

Suffice it to say that we made a number of recommendations to the Secretary, many of which are reflected in the policy that he has recently announced.

I would be glad to respond to questions from any members of the committee.

[The prepared statement of Mr. Richards follows:]

PREPARED STATEMENT OF HON. JAMES R. RICHARDS, INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU THIS AFTERNOON TO DISCUSS THE RESULTS OF OUR FOLLOWUP AUDIT OF NATIONAL PARK SERVICE MANAGEMENT OF CONCESSIONS OPERATIONS.

OUR AUDIT WAS INITIATED AT THE SPECIAL REQUEST OF THE SECRETARY AND INCLUDED A FOLLOWUP REVIEW OF DEFICIENCIES NOTED IN OUR 1986 REPORT ON CONCESSIONS MANAGEMENT. OUR 1986 REPORT CONCLUDED THAT THE METHOD PARK SERVICE USED TO COMPUTE FRANCHISE FEES WAS GROSSLY INADEQUATE AND, AT THE TIME, DETERMINED THAT THE GOVERNMENT WAS LOSING ABOUT $6.7 MILLION A YEAR IN REVENUES. IN ADDITION, PARK SERVICE DID NOT AGGRESSIVELY SOLICIT COMPETITION ON CONCESSION CONTRACTS BECAUSE IT DID NOT MAKE AVAILABLE THE INFORMATION NECESSARY FOR COMPETITORS TO SUBMIT OFFERS FOR NEW OR RENEWED CONCESSION CONTRACTS. THE REPORT RESULTED IN THE PARK SERVICE REVISING ITS FRANCHISE FEE SYSTEM IN 1986, WHICH REQUIRED THAT FEES BE BASED ON ECONOMIC CONSIDERATIONS PURSUANT TO THE CONCESSIONS POLICY ACT OF 1965. HOWEVER, AS OUR CURRENT AUDIT SHOWS, WE FOUND THAT THIS REVISED SYSTEM WAS NOT IMPLEMENTED AT THE NEGOTIATION LEVEL.

THE PURPOSE OF OUR CURRENT AUDIT WAS TO EVALUATE THE ADEQUACY OF THE DETERMINATION AND ASSESSMENT OF FRANCHISE FEES AND THE AWARD AND RENEWAL OF CONCESSION CONTRACTS BY THE PARK SERVICE. THE NATIONAL PARK SERVICE HAS 355 PARKS NATIONWIDE, WITH OVER 100 OF THOSE PARKS HAVING CONCESSION OPERATIONS. THESE OPERATIONS ARE AUTHORIZED AND CONTROLLED BY CONCESSION CONTRACTS OR PERMITS WHICH HAVE STANDARD REQUIREMENTS, INCLUDING PARK SERVICE CONTROL OVER THE TYPE AND QUALITY OF SERVICES PROVIDED TO THE PUBLIC, PRICES OF THOSE SERVICES, FRANCHISE FEE PAYMENTS, AND BUILDING IMPROVEMENT PROGRAMS. FRANCHISE FEES PAID BY THE CONCESSIONER CONSIST OF

A PERCENTAGE FEE OF THE CONCESSIONER'S ANNUAL GROSS RECEIPTS FOR THE PRIVILEGE OF OPERATING A CONCESSION IN A PARK, AND A BUILDING USE FEE FOR USE OF GOVERNMENT-OWNED FACILITIES. FOR 1988, THE PARK SERVICE HAD ABOUT 500 CONTRACTS AND PERMITS, WHICH GENERATED TOTAL GROSS RECEIPTS OF ABOUT $500 MILLION, AND FRANCHISE FEES OF $12.5 MILLION, OR ABOUT 2.5 PERCENT OF THE TOTAL GROSS RECEIPTS. THE FEES INCLUDE ABOUT $1.3 MILLION IN BUILDING USE FEES. HISTORICALLY, FRANCHISE FEES HAVE BEEN IN THE RANGE OF ONE OR TWO PERCENT, WITH SOME AS LOW AS THREE-QUARTERS OF ONE PERCENT. CONCESSION OPERATIONS VARY IN SIZE FROM THE SMALL PRIVATELY-OWNED CONCESSIONS WITH GROSS RECEIPTS LESS THAN $500,000 A YEAR, TO THE LARGER CORPORATE CONGLOMERATE CONCESSIONS THAT HAVE GROSS RECEIPTS RANGING ANYWHERE FROM $5 MILLION TO $80 MILLION A YEAR. AS OF 1988, THE 50 LARGEST CONCESSION CONTRACTS, EACH OF WHICH REPORTED GROSS RECEIPTS IN EXCESS OF $1 MILLION ANNUALLY, REPRESENTED ABOUT 80 PERCENT ($400 MILLION) OF TOTAL GROSS RECEIPTS IN THE NATIONAL PARK SYSTEM.

TO MEASURE THE EFFECTIVENESS OF CONCESSIONS MANAGEMENT, WE USED THE PROVISIONS OF THE NATIONAL PARK SERVICE CONCESSIONS POLICY ACT (PUBLIC LAW 89-249) AND THE PARK SERVICE CONCESSION MANAGEMENT GUIDELINE (NPS-48). THE PROVISIONS OF THE ACT STIPULATE THAT:

- FRANCHISE FEES SHOULD BE DETERMINED ON THE CONCESSIONERS' OPPORTUNITY FOR NET PROFIT IN RELATION TO BOTH GROSS RECEIPTS AND CAPITAL INVESTED.
- FRANCHISE FEES ARE TO BE RECONSIDERED AT LEAST EVERY 5 YEARS BUT CAN BE RENEGOTIATED MORE FREQUENTLY, AND

- REVENUES TO THE UNITED STATES SHALL BE SUBORDINATE TO THE OBJECTIVES OF PROTECTING AND PRESERVING PARK AREAS AND OF PROVIDING ADEQUATE AND APPROPRIATE SERVICES AT REASONABLE RATES TO VISITORS.

IN ORDER TO MEASURE THE CONCESSIONERS' OPPORTUNITY FOR NET PROFIT, PARK SERVICE CONCESSION GUIDELINES REQUIRE THAT FRANCHISE FEES BE NEGOTIATED WITH CONCESSIONERS BASED ON DUN AND BRADSTREET INDUSTRY NORMS FOR EARNED INCOME IN COMPARISON TO THE CONCESSIONERS' GROSS RECEIPTS AND CAPITAL INVESTED.

OUR AUDIT CONCLUDED THAT THE U.S. TREASURY LOST SUBSTANTIAL AMOUNTS OF FRANCHISE FEE REVENUES FROM THE LARGER CONCESSIONERS OPERATING IN THE NATIONAL PARKS BECAUSE FEES WERE NOT BASED ON DUN AND BRADSTREET INDUSTRY NORMS. WE REVIEWED 45 OF THE 500 CONCESSION CONTRACTS, INCLUDING THE 14 LARGER CONTRACTS WHICH COMPRISED ABOUT 50 PERCENT OF BOTH THE TOTAL GROSS RECEIPTS ($268 MILLION) AND FRANCHISE FEES PAID (6.2 MILLION). SINCE THE SECRETARY WANTED TO HAVE A REPORT IN ABOUT 3 MONTHS FROM THE TIME OF HIS REQUEST, WE BASED OUR MAJOR FINDINGS ON AN AUDIT OF THESE 14 LARGER CONTRACTS. WHEN WE COMPARED CONCESSIONERS' AVERAGE INCOME BEFORE TAXES, AS REPORTED ON THEIR FINANCIAL STATEMENTS, WITH DUN AND BRADSTREET INDUSTRY MEDIAN INCOMES, WE CONCLUDED THAT CONCESSIONERS FOR 10 CONTRACTS WOULD HAVE PAID ADDITIONAL FEES AVERAGING $16.7 MILLION YEARLY, OR AS MUCH AS $83 MILLION OVER THE 1984-1988 TIME PERIOD, IF FRANCHISE FEE RATES HAD BEEN NEGOTIATED USING DUN AND BRADSTREET INDUSTRY NORMS. WE ARE PROJECTING THE LOSS OF REVENUE FOR THE 1989 TO 1993 TIME FRAME TO BE ABOUT $109 MILLION.

THE UNREALISTICALLY LOW FEES PAID BY THE CONCESSIONERS WITH THE 14 LARGER CONTRACTS WERE A CONSIDERABLE FACTOR IN INCREASING THE PROFITS AND THE MARKET VALUE OF THEIR CONCESSION OPERATIONS. THE NET INCOME FOR THE 14 LARGER CONTRACTS REVIEWED INCREASED FROM $12.9 MILLION TO $27.9 MILLION (116 PERCENT INCREASE), WHILE THEIR COMBINED GROSS RECEIPTS INCREASED FROM $191.6 MILLION TO $268 MILLION (40 PERCENT INCREASE) FROM 1984 THROUGH 1988. YET, FRANCHISE FEES HAVE GENERALLY REMAINED THE SAME OR INCREASED VERY MINIMALLY AS INDICATED BY THE GOVERNMENT'S AVERAGE RETURN OF ONLY 2.5 PERCENT FEES FROM OVER $500 MILLION IN GROSS RECEIPTS FOR 1988. THIS AVERAGE RETURN IS REPRESENTATIVE OF THE 14 LARGER CONCESSION CONTRACTS WE INCLUDED IN OUR REVIEW.

ONE OF THE MAJOR REASONS FOR THE UNREALISTICALLY LOW FEES WAS THAT RECOMMENDATIONS MADE BY THE PARK SERVICE WASHINGTON HEADQUARTERS STAFF WERE NOT ADOPTED AND SUCCESSFULLY NEGOTIATED BY REGIONAL AND PARK PERSONNEL NEGOTIATING THESE CONTRACTS. IF SUCH RECOMMENDATIONS HAD BEEN ADOPTED, THE GOVERNMENT WOULD HAVE COLLECTED $12.5 MILLION, OR MORE THAN DOUBLE THE AMOUNT OF FEES COLLECTED IN 1988 ON THESE CONTRACTS.

PARK SERVICE REGIONAL PERSONNEL, WHO WERE RESPONSIBLE FOR DETERMINING AND NEGOTIATING FRANCHISE FEES, LACKED THE KIND OF EDUCATIONAL BACKGROUND OR EXPERTISE NEEDED TO DEAL WITH CONCESSIONERS, WHO WERE NORMALLY EXPERIENCED BUSINESS EXECUTIVES. OF THE 120 EMPLOYEES IN THE PARK SERVICE CONCESSION MANAGEMENT DIVISION, ONLY FOUR HAD BACKGROUNDS OR EXPERIENCE IN FINANCIAL MATTERS, AND THREE OF THOSE FOUR PEOPLE WERE IN THE HEADQUARTERS OFFICE. CONCESSION PERSONNEL WHO WERE TRAINED AS PARK RANGERS, FOR EXAMPLE, WERE OUTMATCHED WHEN NEGOTIATING WITH SOPHISTICATED

BUSINESS EXECUTIVES AND THEIR ACCOUNTANTS. IT IS SIMPLY NOT A LEVEL PLAYING FIELD WHEN A PARK RANGER GOES TO BAT AGAINST CORPORATE FINANCIAL EXPERTS. AS A RESULT OF THIS MISMATCH OF EXPERTISE, FEES MUCH, MUCH LOWER THAN THOSE RECOMMENDED BY PARK SERVICE HEADQUARTERS STAFF WERE BEING NEGOTIATED BY REGIONAL AND PARK PERSONNEL.

REGIONAL AND PARK PERSONNEL OFTEN IGNORED FEES RECOMMENDED BY THE WASHINGTON OFFICE BASED UPON FINANCIAL ANALYSES IN EXCHANGE FOR CONCESSIONERS' AGREEMENTS TO UNDERTAKE CAPITAL IMPROVEMENTS IN THE PARKS. WE FOUND, HOWEVER, THAT CAPITAL IMPROVEMENTS THAT WERE MADE GENERALLY BENEFITED THE CONCESSIONERS' REVENUE-PRODUCING FACILITIES RATHER THAN PRESERVING THE NATURAL AND CULTURAL RESOURCES IN THE PARKS.

FOR EXAMPLE, A FRANCHISE FEE WAS PROPOSED BY THE WASHINGTON OFFICE FOR A CONCESSIONER AND WAS NEGOTIATED BY A REGIONAL OFFICE AT HALF OF THE PROPOSED RATE, IN PART BECAUSE A PLANNED CAPITAL IMPROVEMENT PROGRAM WAS INCLUDED IN THE CONTRACT. HOWEVER, THE CAPITAL IMPROVEMENT PROJECTS DESCRIBED IN THE CONTRACT WILL MOST LIKELY INCREASE REVENUES TO THE CONCESSIONER. TAKING INTO CONSIDERATION IMPROVEMENTS MADE BY THE CONCESSIONER, OUR ANALYSES SHOWED THAT PARK SERVICE DID NOT REALIZE ADDITIONAL FEES AVERAGING $900,000 A YEAR BY NOT ADOPTING FEES THAT WOULD OF LIMITED THE CONCESSIONER TO A REASONABLE RETURN ON ITS INVESTMENT.

IN A DIFFERENT EXAMPLE, THE PROPOSED FRANCHISE FEES OF 10 PERCENT RECOMMENDED BY THE PARK SERVICE HEADQUARTERS STAFF AT ANOTHER NATIONAL PARK WERE SUBSTITUTED BY REGIONAL PERSONNEL FOR ABOUT 2 PERCENT FEES PLUS A 5 PERCENT SET-ASIDE. THE SET-ASIDE FOR CAPITAL IMPROVEMENTS WAS DEPOSITED IN A SPECIAL ACCOUNT MAINTAINED BY THE CONCESSIONER TO FUND THE DESIGN, CONSTRUCTION, AND REHABILITATION OF INFRASTRUCTURES, WHICH COINCIDED WITH REVENUE-PRODUCING CAPITAL IMPROVEMENTS MADE BY THE CONCESSIONER. MORE THAN HALF OF THE FUNDS HAVE BEEN DISBURSED AND IMPROVEMENTS THAT BENEFITTED THE CONCESSIONER WERE ALSO INCLUDED IN THE CONSTRUCTION. PARK SERVICE ALSO ALLOWED THE CONCESSIONER TO INCREASE PRICES TO THE PUBLIC TO SUCH AN EXTENT THAT THE CONCESSIONER ONLY CONTRIBUTED ONE-HALF OF 1 PERCENT OF THE SET-ASIDE FEES. AGAIN, TAKING INTO CONSIDERATION IMPROVEMENTS MADE BY THE CONCESSIONER, OUR ANALYSES SHOWED THAT PARK SERVICE DID NOT REALIZE ADDITIONAL FEES AVERAGING $2.5 MILLION A YEAR.

AS A RESULT OF PARK SERVICE ACCEPTANCE OF CAPITAL IMPROVEMENTS IN LIEU OF INCREASED FRANCHISE FEES, REVENUES GOING TO THE U.S TREASURY HAVE BEEN REDUCED TREMENDOUSLY, AND CONCESSIONERS HAVE GREATLY INCREASED THE VALUE OF THEIR OWN ASSETS IN THE PARKS AT THE EXPENSE OF GOVERNMENT REVENUES. THIS HAS ALSO CREATED A HAVE AND HAVE-NOT SITUATION AMONG PARKS: SMALLER PARKS, WHICH CANNOT AFFORD TO ESTABLISH CAPITAL ACCOUNTS, MUST COMPETE FOR LIMITED APPROPRIATED DOLLARS TO ACCOMPLISH MAINTENANCE AND REPAIR OF

PARK FACILITIES, WHILE THE LARGER AND MORE POPULAR PARKS, SUCH AS YOSEMITE, YELLOWSTONE, GRAND CANYON AND GLEN CANYON, CAN RETAIN A PORTION OF FRANCHISE FEES TO IMPROVE THEIR FACILITIES.

IN THIS REGARD, WE NOTED ONE CONCESSIONER THAT INITIATED A CAPITAL IMPROVEMENT PROGRAM PROJECT AT THE REQUEST OF A PARK SERVICE REGIONAL OFFICE. THE CONCESSIONER ADVANCED $7.4 MILLION TO THE PARK SERVICE TO COMPLETE THE PROJECT AND WAS GIVEN POSSESSORY INTEREST. THE PARK SERVICE WOULD REGAIN POSSESSORY INTEREST ONLY BY REPAYING THE ADVANCE WITH 12 PERCENT INTEREST. THE PARK SERVICE HAD PAID $4.4 MILLION IN PRINCIPAL AND $3.7 MILLION IN INTEREST FROM 1982 THROUGH 1989, WITH A $3 MILLION PRINCIPAL BALANCE REMAINING. A SOLICITOR'S OPINION ON A SIMILARLY STRUCTURED PROJECT IN 1987 CONCLUDED THAT PARK SERVICE DID NOT HAVE THE AUTHORITY TO BORROW FROM A BUSINESS ENTITY AND THEN PAY BACK THE PRINCIPAL PLUS INTEREST.

ANOTHER IMPORTANT AND VERY SIGNIFICANT REASON FOR REDUCED FEES WAS PARK SERVICE'S LACK OF AGGRESSIVENESS TO SOLICIT COMPETITION FOR CONTRACT AWARDS AND RENEWALS. THE 1965 CONCESSIONS POLICY ACT REQUIRED THE PARK SERVICE TO GIVE REASONABLE PUBLIC NOTICE OF INTENT TO AWARD OR RENEW CONCESSION OPPORTUNITIES AND CONSIDER AND EVALUATE ALL PROPOSALS RECEIVED. YET, THE PARK SERVICE BELIEVED THAT REASONABLE PUBLIC NOTICE MEANT PUBLISHING THE CONCESSION OPPORTUNITIES IN THE "FEDERAL REGISTER" AND MAILING NOTICES TO PRIOR APPLICANTS. IN OUR 1986 REPORT ON CONCESSIONS MANAGEMENT, WE REPORTED THAT THE PARK SERVICE PUBLISHED CONCESSION OPPORTUNITIES ONLY IN THE "FEDERAL REGISTER," WHICH, IN EFFECT, IMPOSED A LIMIT ON FREE AND OPEN COMPETITION; AND RECOMMENDED

THAT PARK SERVICE USE THE "COMMERCE BUSINESS DAILY" AND APPROPRIATE TRADE PUBLICATIONS TO ADVERTISE BOTH ITS RENEWALS AND NEW CONCESSION AWARDS. AT THAT TIME, WE NOTED THAT OTHER FEDERAL AGENCIES, SUCH AS THE U.S. ARMY CORPS OF ENGINEERS, HAD USED THIS MEDIUM TO ANNOUNCE THEIR CONCESSION OPPORTUNITIES. IN RESPONSE TO OUR 1986 REPORT, PARK SERVICE STATED THAT ADVERTISING IN THE "COMMERCE BUSINESS DAILY" WOULD NOT PROPERLY ADDRESS THE INTENT OF THE CONCESSIONS POLICY ACT, WHICH IS TO NOTIFY THE PUBLIC OF THE CONCESSIONERS' PREFERENCE RIGHT IN THE RENEWAL PROCESS. WE TOTALLY DISAGREE WITH PARK SERVICE'S INTERPRETATION WHICH INTERPRETS THE INTENT OF THE CONCESSIONS POLICY ACT TO LIMIT FREE AND OPEN COMPETITION. ON THE CONTRARY, WE BELIEVE THAT OPEN COMPETITION IS HEALTHY AND WILL ULTIMATELY BENEFIT THE PARKS AND THE VISITING PUBLIC, AND AT THE SAME TIME, INCREASE REVENUES TO THE GOVERNMENT.

ANOTHER IMPORTANT ASPECT OF THE COMPETITIVE AWARD PROCESS IS FULL DISCLOSURE OF THE REQUIREMENTS AND RESOURCES NEEDED BY POTENTIAL BIDDERS TO SUCCESSFULLY COMPETE FOR A CONCESSION CONTRACT. WE FOUND THAT THE STATEMENTS OF REQUIREMENTS FOR ADVERTISING INDIVIDUAL CONCESSION RENEWALS DID NOT CONTAIN THE INFORMATION CRUCIAL FOR POTENTIAL BIDDERS TO ADEQUATELY RESPOND AND TO BE CONSIDERED FOR A CONCESSION CONTRACT. THESE STATEMENTS LACKED INFORMATION SUCH AS ANNUAL RECEIPTS OF PARTICULAR OPERATIONS, THE AMOUNT OF INVESTMENT REQUIRED FOR THE PURCHASE OF AN EXISTING CONCESSIONER'S ASSETS, RELATIVE PROFITABILITY OF AN OPERATION, WORKING CAPITAL REQUIREMENTS, OR MARKET RESEARCH DATA. YET, OFFERERS NEEDED THIS INFORMATION TO ADDRESS THE FACTORS USED BY PARK SERVICE TO EVALUATE THE PROPOSAL FOR THE CONCESSION CONTRACT. BY PARK SERVICE

FAILING TO PROVIDE THIS CRUCIAL INFORMATION, THE EXISTING CONCESSIONERS, IN EFFECT, HAVE A LOCK ON RENEWAL OF THEIR CONTRACTS.

TO ILLUSTRATE AN EFFECT OF LIMITED DISCLOSURE, WE IDENTIFIED A CONTRACT WHERE A CONCESSIONER HAD ITS PREFERENTIAL RIGHT TO RENEWAL REVOKED PRIOR TO THE CONTRACT EXPIRATION ON DECEMBER 31, 1987, BECAUSE IT WAS DELINQUENT ON THE PAYMENT OF FRANCHISE FEES AND DID NOT SUBMIT TIMELY ANNUAL FINANCIAL REPORTS. IN FEBRUARY 1988, PARK SERVICE PUBLISHED THE CONCESSION OPPORTUNITY IN THE "FEDERAL REGISTER" WITHOUT THE PREFERENCE CLAUSE OR THE INTENT TO RENEW WITH THE EXISTING CONCESSIONER STATEMENT. HOWEVER, THE NOTICE LACKED ALL THE RELEVANT DATA AND REQUIREMENTS NEEDED BY POTENTIAL BIDDERS TO MAKE AN OFFER. CONSEQUENTLY, THE EXISTING CONCESSIONER WAS THE ONLY RESPONDENT TO THE SOLICITATION AND WAS AWARDED A 5-YEAR CONCESSION CONTRACT IN 1989, WITH THE IDENTICAL FRANCHISE FEES AS NEGOTIATED IN ITS PREVIOUS CONTRACT DESPITE ITS POOR PERFORMANCE UNDER THE PREVIOUS CONTRACT.

THE ACT ALSO PROVIDES THAT THE SECRETARY SHOULD ENCOURAGE CONTINUITY OF OPERATIONS AND SERVICE BY GRANTING A PREFERENCE IN THE RENEWAL OF A NEW CONTRACT TO A CONCESSIONER THAT HAS PERFORMED ITS OBLIGATIONS SATISFACTORILY UNDER A PREVIOUS CONTRACT. THE RIGHT OF PREFERENCE IN RENEWAL, IN EFFECT, GIVES AN EXISTING CONCESSIONER THE RIGHT TO MEET THE TERMS OF THE BEST OFFER TO A PROPOSED NEW CONTRACT OR TO RECEIVE THE AWARD IF ITS OFFER IS SUBSTANTIALLY EQUAL TO THE BEST OFFER. AS A RESULT, WE FOUND THAT THE EXISTING CONCESSIONER MADE THE ONLY OFFERS FOR 28 OF 29 CONTRACT AWARDS FROM 1985 THROUGH 1989. THE ONLY COMPETING OFFER RECEIVED WAS FOR MEDICAL SERVICES AT YELLOWSTONE NATIONAL PARK.

THIS LACK OF COMPETITION HAS ASSURED EXISTING CONCESSIONERS THAT THEY MAY HAVE THEIR CONTRACTS RENEWED AS LONG AS THEY WANT TO OPERATE.

ON THE OTHER HAND, WHEN IT COMES TO NEGOTIATED SALES OF CONCESSION CONTRACTS INITIATED BY CONCESSIONERS ALREADY OPERATING UNDER A CONTRACT, WE FOUND THAT THERE IS SIGNIFICANT VALUE AND INTEREST IN CONCESSION OPERATIONS IN THE NATIONAL PARKS, AS EVIDENCED BY THE REPORTED SALE OF 22 CONCESSION OPERATIONS DURING 1988 ALONE. THIS INTEREST DOES NOT REST WITH THE SMALL FAMILY-OWNED CONCESSIONS, BUT WITH THE THE LARGE MULTI-NATIONAL CORPORATIONS WITH REVENUES IN EXCESS OF $1 BILLION. FOR EXAMPLE, THE CSX CORPORATION, WHICH HAS OPERATING REVENUES IN EXCESS OF $7 BILLION, OWNS AND OPERATES GRAND TETON LODGE AS A WHOLLY-OWNED SUBSIDIARY. IN ANOTHER INSTANCE, THE GREYHOUND CORPORATION, WHICH HAS REVENUES IN EXCESS OF $3.5 BILLION, OWNS AND OPERATES GLACIER PARK, INC., AS A WHOLLY-OWNED SUBSIDIARY.

THE SALES INCLUDED SOME OF THE CONCESSION OPERATIONS WITH THE HIGHEST GROSS RECEIPTS, SUCH AS GRAND CANYON ($49 MILLION) AND GLEN CANYON NATIONAL RECREATION AREA ($47 MILLION), BASED ON 1988 DATA. THE DEL WEBB CORPORATION SOLD ITS GLEN CANYON CONCESSION OPERATIONS TO ARA LEISURE SERVICES, INC., IN 1988 FOR $72 MILLION. INCIDENTALLY, ARA IS A WHOLLY OWNED SUBSIDIARY OF THE ARA GROUP, INC., WHICH IN 1989 HAD ANNUAL REVENUES IN EXCESS OF $4 BILLION. ARA INCLUDED OVER $29 MILLION, OR ABOUT 40 PERCENT OF THE SALE PRICE, IN ITS FINANCIAL STATEMENTS AS "INTANGIBLE ASSETS," WHICH WAS THE VALUE FOR "CONTRACT RIGHTS" AND "GOODWILL," AS A RESULT OF LOW FRANCHISE FEES, THE RIGHT OF PREFERENCE IN CONTRACT RENEWALS, AND A RIGHT TO A REASONABLE PROFIT. THE TREMENDOUS

INCREASE IN THE PURCHASE PRICE, IN EFFECT, REDUCES THE PROFITABILITY OF THE PURCHASER'S CONCESSION OPERATION AND THE ABILITY OF PARK SERVICE TO SET OR INCREASE FEES AT APPROPRIATE LEVELS. BUT MOST IMPORTANTLY, IT ALSO DEPRIVES THE FEDERAL GOVERNMENT FROM SHARING IN THE GREAT INCREASE IN VALUE OF THE CONCESSIONER'S ASSETS RESULTING FROM UNREALISTICALLY LOW FRANCHISE FEES AND CONTRACT PREFERENCE.

WE ALSO DETERMINED THAT REGIONAL AND PARK PERSONNEL WERE HAMPERED IN THEIR EFFORTS TO INCREASE FEES DURING CONTRACT RECONSIDERATION BECAUSE OF MUTUAL AGREEMENT CLAUSES. BEFORE PASSAGE OF THE 1965 ACT, CONCESSION CONTRACTS CONTAINED CLAUSES THAT GENERALLY REQUIRED BOTH PARTIES TO AGREE TO ANY CHANGES TO THE FRANCHISE FEES. HOWEVER, THE 1965 ACT SPECIFIED THAT FEES SHOULD BE RENEGOTIATED AT LEAST EVERY 5 YEARS. FROM 1965 TO 1981, HOWEVER, FOR REASONS THAT ARE NOT CLEAR TO US, PARK SERVICE CONTINUED TO INCLUDE THE MUTUAL AGREEMENT CLAUSE IN NEW OR RENEWED CONCESSION CONTRACTS. WE DO NOT BELIEVE THAT THIS PROVISION WAS REQUIRED BY LAW. INCIDENTALLY, WE NOTED THAT SIX OF THE SEVEN CONTRACTS WITH MUTUAL AGREEMENT CLAUSES IN OUR REVIEW WERE AWARDED AFTER ENACTMENT OF THE 1965 ACT, EVEN THOUGH IN OUR JUDGMENT THESE CLAUSES DID NOT HAVE TO BE INCORPORATED INTO THE CONTRACTS AFTER THAT DATE. FURTHER, WE BELIEVE THAT PARK SERVICE HAS THE AUTHORITY TO ADJUST THE RATES AND PRICES CHARGED TO THE PUBLIC UNDER PROVISIONS OF THE CONTRACTS BUT DID NOT PURSUE THIS OPTION WHEN AGREEMENT COULD NOT BE REACHED ON APPROPRIATE FEES.

PARK SERVICE ALSO AUTHORIZED CONCESSIONERS TO EXCLUDE CERTAIN REVENUES FROM GROSS RECEIPTS BEFORE COMPUTING FRANCHISE FEES. FROM 1985 THROUGH

1988, CONCESSIONERS EXCLUDED FROM GROSS RECEIPTS REVENUES OF $97 MILLION THAT WERE NOT SPECIFICALLY AUTHORIZED BY THE ACT. FOR EXAMPLE, NATIVE AMERICAN HANDICRAFTS, WITH SALES OF ABOUT $45 MILLION, WERE EXCLUDED, ACCORDING TO PARK SERVICE, IN ORDER TO ENCOURAGE SALES. HOWEVER, THE PROFIT ON THESE HANDICRAFT ITEMS WAS ABOUT 122 PERCENT OF COSTS, AND SPECIAL INCENTIVES FOR SALES WERE APPARENTLY NOT NECESSARY. IN ONE INSTANCE, A CONCESSIONER EXCLUDED OVER $3.5 MILLION IN SALES FROM NATIVE AMERICAN HANDICRAFTS AND $500,000 FOR EMPLOYEES MEALS, LODGING, AND TRANSPORTATION. THIS REPRESENTED A SIGNIFICANT PERCENTAGE OF THE CONCESSIONER'S GROSS RECEIPTS. WE ESTIMATED THAT PARK SERVICE LOST ABOUT $2 MILLION USING CURRENT FRANCHISE FEES FOR THE 4-YEAR PERIOD BECAUSE OF THE EXCLUSIONS.

IN ADDITION, CONCESSION CONTRACTS NEGOTIATED BY PARK SERVICE DID NOT ASSESS BUILDING USE FEES BASED ON FAIR RENTAL VALUE FOR THE USE OF GOVERNMENT-OWNED BUILDINGS. PARK SERVICE OFFICIALS STATED THAT APPRAISALS WERE GENERALLY NOT OBTAINED BECAUSE THEY CONSIDERED THEM TO BE TOO TIME CONSUMING AND TOO COSTLY WHEN PERFORMED BY NON-PARK SERVICE PERSONNEL. WE FOUND THAT ONLY 4 OF THE 11 CONTRACTS REVIEWED HAD APPRAISALS FOR PART OR ALL OF THE GOVERNMENT-OWNED BUILDINGS USED BY THE CONCESSIONER. FOR THE FOUR CONTRACTS THAT HAD APPRAISALS, PARK SERVICE STILL DID NOT CHARGE FAIR ANNUAL RENT BECAUSE OF CAPITAL IMPROVEMENTS UNDERTAKEN BY THE CONCESSIONER, UNPROFITABLE ACTIVITIES OF THE CONCESSIONER, OR THE CONCESSIONER'S REFUSAL TO PAY A HIGHER RENT. IN ADDITION, THE FOUR APPRAISALS WERE OUTDATED BECAUSE THEY WERE CONDUCTED AS EARLY AS 1976, WITH THE LATEST ONE CONDUCTED IN 1985.

AS A RESULT, ANNUAL RENTS FOR SEVEN CONTRACTS WERE CALCULATED OR CHARGED BASED ON REGIONAL OR PARK PERSONNEL ESTIMATES OF THE RENTAL VALUES. WE ESTIMATED THAT THE GOVERNMENT HAS LOST AND WILL CONTINUE TO LOSE OVER $1.4 MILLION ANNUALLY BECAUSE OF LOW BUILDING USE FEES.

OVERALL, WE MADE A TOTAL OF 16 RECOMMENDATIONS. THESE RECOMMENDATIONS WERE INTENDED TO IMPROVE PROCEDURES FOR DETERMINING AND ASSESSING FRANCHISE FEES, ENHANCING NEGOTIATION CAPABILITIES OF PARK SERVICE CONCESSION PERSONNEL, EVALUATING LEGALITY AND APPROPRIATENESS OF CAPITAL ADVANCES AND EXCLUSIONS FROM GROSS RECEIPTS, AND SOLICITING COMPETITION IN THE AWARD AND RENEWAL OF CONCESSION CONTRACTS.

THIS CONCLUDES MY REMARKS, AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT THE COMMITTEE MAY HAVE ON THIS MATTER.

Senator **Bumpers**. Thank you, Mr. Richards.

Let me say, Mr. Secretary, to put myself on record, I strongly endorse what you are trying to do and would go further, which brings me to my first question.

You are Secretary of Interior right now and Mr. Ridenour is Director of the Park Service. I trust if precedent holds, that neither of you will hold those jobs forever. Policies instituted by one Secretary have a tendency to be changed and altered, maybe improved on or debased, by their successors. If what you are proposing is good public policy, why should it not be codified into law? Your policy could be changed tomorrow.

What if Senator McClure were Secretary tomorrow? He would zap everything you have done.

[Laughter.]

Senator **McClure**. Not everything.

Senator **Bumpers**. So my opinion is that this ought to be codified. And it makes a lot of sense. Now Senator McClure and I are good friends, and I have the utmost respect for him. We have serious differences on this committee, on mining laws reform and on other issues. But it seems to me that these changes you propose ought to not be left for another Secretary to come along and change.

Now, you cannot convince the people across this country, and you certainly cannot convince this Senator, that we have a sensible, business-like approach to concession contracts when we have 500 contracts with revenues of $500 million a year and the United States Government, admittedly in addition to the capital improvements that are made, gets a return of 2.5 percent.

Now, Senator McClure made a point a moment ago that I would take some exception to. You have a concession that takes in $100,000 a year and maybe it is making $10,000 a year. But if they up their revenues to $120,000 a year, that somehow or other, their revenue and net profits would increase by a like amount because they have crossed the threshold of their cost of doing business.

I have a son in the chocolate chip cookie business and once he reaches a certain point, it does become very profitable after that point, but it is not all profit. You still have an ingredient cost, you still have some additional labor costs, packaging costs and all that sort of thing. And there are very few businesses that do not.

But my point is, taking his illustration at face value, let us assume that you do get another $25,000 of business and in fact it is all profit. Why should we, who own that resource—I mean, I say "we," I am talking about the people of the country; we own that resource. Why should we not share in that?

Now, my first question, Mr. Secretary, is why should we not codify this policy?

Secretary **Lujan**. I would not have any objection to that if that is what the committee wants to do. What I have tried to do, or ask the Park Service to do, is to allow us to be able to make those changes within existing law, because I think that it would be very difficult, to be very honest with you, to get those changes made in the Congress. I do not believe that——

Senator **Bumpers**. But you do not mind if I have a go at it, do you?

Secretary **Lujan**. No, I do not. As a matter of fact that would be a great compliment.

Senator **Bumpers**. I can tell you one thing, one of the reasons we have never been able to do it before is because we did not get any help downtown. This is about the third time we have been through this, and I have just been appalled year after year that we were never able to change this policy.

I have good friends that are concessioners. I have the utmost respect for them, but we also have an obligation as members of this committee and Members of Congress to protect the people's business and protect their assets, and a 2.5 percent return when we are furnishing the asset that produces the money is nothing.

Senator **McClure**. Dale, could I ask a question at that point?

Senator **Bumpers**. Yes.

Senator **McClure**. First of all, I hope you did not misunderstand the illustration I meant. I did not mean to indicate anything other than the fact that merely making percentage comparisons between increases in revenues and increases in profits had any relevance or meaning at all. The separate question is how much return should the Federal Government get out of net revenues. That is a different question.

I want to make certain that I understand where we are headed now. Are we talking about renegotiating contracts pursuant to the terms of the contracts, renegotiating fees pursuant to the terms of the contracts, or are we talking about taking unilateral action during a term, fixed term of a contract and abrogating the contract?

Secretary **Lujan**. No, we are not talking about existing contracts. There is nothing we can do about an existing contract, but when they do come up then we sit down and negotiate, and in that negotiation I have instructed the Park Service, as part of that negotiation, to do some of these things that I have mentioned in my testimony.

Senator **McClure**. That would be pursuant to the terms of the contract which exists, either at the expiration of a contract or pursuant to the terms of the contract?

Secretary **Lujan**. We would not touch an existing contract. It is either in renewals or in a change of contract. If somebody wants to change a contract, then of course, the whole thing is open.

Senator **Bumpers**. Mr. Secretary, if I may join in this little colloquy here. Your contracts normally provide for the renegotiation of the fee every 5 years. Is that not fairly standard practice?

Secretary **Lujan**. The problem is that both sides have to agree, and in the past in many instances, in most instances I would say, the concessioner has not agreed to renegotiate every 5 years.

Senator **Bumpers**. Well, at one time I think these contracts provided that you would renegotiate the fee every five years, but both sides had to agree, which meant, if I were the lessee, I certainly would not agree.

Secretary **Lujan**. Exactly.

Senator **Bumpers**. But that is not the law anymore and that is not the rule anymore as I understand it, and it is submitted to arbitration is it not, if the concessioner and the Park Service cannot agree?

Mr. RICHARDS. May I clarify that Mr. Chairman?

Senator BUMPERS. Yes.

Mr. RICHARDS. Six of the seven contracts that we audited here have those mutual agreement clauses in them.

Senator MCCLURE. They are old contracts?

Mr. RICHARDS. Yes. Only one of the six precedes the 1965 act. The other five contracts were contracts that expired after the Act went into place, but for some unknown reason the Park Service inserted mutual agreement clauses in the new contracts and did not change that policy until about 1980, and I think maybe Mr. Ridenour can add to that.

Senator MCCLURE. The provision for the 5-year renegotiation was included in the 1965 law. Is that not correct?

Mr. RICHARDS. That is correct.

Senator MCCLURE. So, your criticism would be that the Park Service did not follow the existing law?

Mr. RICHARDS. Yes, and I have so testified.

Senator BUMPERS. I might just make one observation here. My State has the only diamond mine in North America. We are very proud of it. We made it a State park while we had a young, dynamic governor down there back in the early 1970's.

[Laughter.]

Senator BUMPERS. And they are considering doing test core drilling down there now to determine whether or not that mine maybe ought to be commercially mined.

Now, I know Mr. Ridenour is familiar with all of this, but my point is one of the things that Senator McClure and I have had strong differences on is mining reform. Do you know if that diamond mine were on Federal land and somebody had thoughtfully gone out there 5 years ago and staked a claim on it, they would not have to ask permission? They would not even have to put up a bond. They could mine it, they could take $100 million or $1 billion worth of diamonds out of there, and you know what the Federal Government would get? Zip.

Now, the ordinary man on the street would not believe that, but that is correct.

Senator MCCLURE. How much is the Federal Government getting now?

Senator BUMPERS. Zip. Nothing.

Senator MCCLURE. Because that young, dynamic, far-seeing governor——

Senator BUMPERS. Well, that young, dynamic governor who is now a Senator is going to try to change that, too.

[Laughter.]

Senator BUMPERS. Good looking. I forgot to add that.

[Laughter.]

Senator BUMPERS. But here is another case when you talk to people on the street, they would not believe you. They think that is just another horror story you are telling, that these things do not actually go on. Well, they do. It is just one of those cases where nobody has ever addressed it, and so far as I am concerned these concession contracts fall in the same category as the outrageousness of those mining laws, which Ulysses Grant signed.

Now Mr. Secretary, there is a gentleman seated behind you by the name of Rex Maughan, who is Chairman of the Conference of National Park Concessioners. He is quoted in the New York Times as saying that your proposal is un-American. Do you want to respond to that? You can look at me while you are doing it. You do not have to look at him.

[Laughter.]

Secretary LUJAN. I know Rex and he is a very good operator, I might say. Their operation as a concessioner is a very good one. I have always considered myself a straight-up American. He must have either been misquoted——

[Laughter.]

Secretary LUJAN [continuing]. Or something must have happened, because I know that he does not really believe that.

Senator BUMPERS. He is going to be on the panel so we will let him answer at that time.

Now, I want to ask a couple of questions then I am going to turn this over to Senator McClure because we probably need to leave here around 20 after, Jim.

And I want to assure you, Rex, and the other panel that we will have an additional hearing because I am anxious to hear the concessioners' view and that panel, and we will do that as expeditiously as possible

Mr. Secretary, you do not have the personnel to carry out your policies right now, do you?

Secretary LUJAN. No, sir.

Senator BUMPERS. The IG has pointed out that out of 124 or 125 people in your concession department over there, you have four CPA's or financial analysts, three here and one in the western district. Now, you cannot carry this policy out. Incidentally, that budget is $5 million for that department, and we got $12.5 million last year in fees. So we are spending about 40 percent of everything we take in just to operate the department to oversee the contracts. Correct?

Now, are you prepared to ask for additional personnel to implement these policies?

Secretary LUJAN. Senator, what we are going to start off doing is we are going to use part of the private sector to come in and help us to do that, to do appraisals to set up certain ways of negotiating. We know that our people do not have the proper education to do that. As time goes along, we are of course going to look for people who do have experience and, of course, to upgrade our own employees. But at the very beginning, we are going to have to go outside to do some contracting to get some help.

Senator BUMPERS. Mr. Ridenour.

Mr. RIDENOUR. Senator, if I could I would like to clear up what appears to be a popular misconception in this whole area of negotiations. The critical phase for setting up these contracts is when we put together the specifics of what will be in the bid document. In other words, what the Park Service is going to demand in order for someone to be a successful bidder.

There seems to be in the newspaper articles I read and wherever I read a thought that we negotiate with the existing contractor when that contract period is over. That is not true. Any person, any company, anyone can come into that process and bid to try to get the contract. They have to answer to the specifications that we put out.

So the critical point will be in structuring the specifications of the bid proposal. That is where we need help. That is where we need help from our people. That is where we can bring in some professional people who are in the hotel-restaurant consulting business that would tell us that you are not being unreasonable in what you are asking in structuring this bid proposal or, yes, you are being unreasonable. No one can take that business and make a dollar off of it with what you have set up.

So, I just want to get across the point that we are not always negotiating with the person who exists there. That is what has happened essentially in the past. But that process is actually a process that is closed to the existing concessioner in terms of negotiations because anyone can bid.

Senator **BUMPERS**. Well, now, Mr. Ridenour and Mr. Inspector General, both, I would like to hear your comment on this. I think two of the most perplexing things about this whole policy that we have had in the past are the so-called preferential right and the possessory interest. Now, so the record will be clear on this, a possessory interest is where the concessioner makes an investment, a capital investment in the park. It might be repairing a road or building a road, or it might be building a new visitor center or putting a new roof on the visitor center. Is that correct?

Secretary **LUJAN**. Yes.

Senator **BUMPERS**. In any event, whatever he does, he puts that on his books and it is depreciated over some period of time. But the point is, if the contract expires and a new concessioner is chosen, he is entitled to what is called a possessory interest. That is he is entitled to his money back from the Government that he put into that. Is that correct?

Secretary **LUJAN**. That is correct.

Mr. **RICHARDS**. It is called in the law "just compensation."

Senator **BUMPERS**. And how is that defined?

Mr. **RICHARDS**. It is defined in various ways such as cost of replacement less depreciation, or not to exceed market value.

Senator **BUMPERS**. It is called sound value is it not?

Mr. **RIDENOUR**. Sound value and market value.

Senator **BUMPERS**. But that is not the depreciated value or that is not the book value on his books.

Mr. **RICHARDS**. That is correct.

Senator **BUMPERS**. It is the market value at that time.

Mr. **RICHARDS**. That is correct.

Senator **BUMPERS**. Now, how do you establish market value of a street that has been built?

Mr. **RICHARDS**. Well, it is difficult to determine, or for a roof that has been built. It is difficult to value those things. Nevertheless, appraisers do that sort of thing.

Senator **MCCLURE**. Mr. Chairman, because there is going to be such a gap between the testimony of this panel and the others who will later appear, and there is going to be a period of time when there is public reporting on the conversations here, I think it is important for us to at least indicate that there is a debate and a real argument about the fact about what is a possessory interest and how you value it, and how you should value it; and there is not agreement from the concessioner group with the statements just being made.

Senator **Bumpers**. They are all shaking their head no, so I had assumed that.

Secretary **Lujan**. Let me make a point here, Mr. Chairman, the point with possessory interest—at least my view of it and I will right up front say that is my view, but certainly the concessioners would not agree with it—is that the Park Service in the past has set that franchise fee very, very low in order to leave money there for the concessioner to be able to put up a building, we will say. Now, once they put up that building it becomes theirs. That is the possessory interest.

But my contention is and my view is that we set that rate so very, very low, so he could build that building, and in essence he is using the money that would have otherwise gone to the Federal Government to build that building and then we have to——

Senator **Bumpers**. And then you have to pay him back if he does not get the contract renewed?

Secretary **Lujan**. Exactly.

Senator **Bumpers**. That is the most bizarre thing about this whole policy. It drives me insane. But I could go on and express my outrage about this all afternoon, but I want to give my distinguished colleague an opportunity to set the record straight.

Senator **McClure**. Mr. Chairman, the Secretary and I have had lengthy and vigorous discussions on precisely that last point. And I guess if you were to view it as he has expressed it, that the fee is low, this concessioner fee, and therefore the return on the investment really belongs to the Government, you could come to that conclusion.

But let us face the fact that at the beginning of these processes that are initiated, we are trying to induce somebody to make an investment in a facility to benefit the public. And before anybody will make that investment, they have to have some reasonable assurance they are going to get a return on their investment.

Two things happen. One is, the fee is low because we have to have a low fee or they are not going to make the investment. Is that not correct?

Secretary **Lujan**. I do not believe that.

Senator **McClure**. You do not believe that. Then why was not a higher fee charged? Why did not somebody else come forward? Why did not Manny Lujan go out there and form a corporation and come in here and say, hey, I have got the money. I will put it down. I will build that concession, and I will get rich instead of these other people. You did not do that. I did not do that. The market as a whole did not do that, did they?

Secretary **Lujan**. No.

Senator **McClure**. In almost every instance somebody had the chance to come in and do that; is that not correct?

Secretary **Lujan**. In all due respect, that may have been the case 30 years ago when these contracts were first made. But we are in a different time.

Senator McClure. I understand. In some places we are in a different time, and I think you and I are in agreement on that. We are looking at the most popular park areas, the ones that are most visited in which they have the potential to make a return on their investment. That is not true everywhere.

Secretary Lujan. That is correct.

Senator McClure. Secondly, if indeed somebody, regardless of what the fee structure is, regardless of this other question about whose money was it went into it, the Government did not put up a dime, did they?

Secretary Lujan. No.

Senator McClure. The Government did not put up a penny.

Secretary Lujan. That is correct.

Senator McClure. The Government put up nothing. Somebody else put up the money.

Secretary Lujan. Right.

Senator McClure. We will have another argument about then who owns it, whose money was it. I have always been puzzled by this idea the Government somehow ethereally attains assets without having contributed anything.

But the other side of that is if somebody is going to be subject to being dispossessed, as they can be under the current processes—we all agree that is true—but then they want to know, well, all right, I make a million dollar investment in that facility this year. If somebody else comes in next year and decides to take it away from me, there has got to be a mechanism by which I get my money back. We do not have any argument over that, do we?

Secretary Lujan. No, we do not.

Senator McClure. Even though you think that may be the Government's money, they put it up. They are entitled to have it back, under those circumstances.

Secretary Lujan. They may have borrowed money and they have to make sure that they can pay it back and all of that, yes, sir.

Senator McClure. A businessman in making an investment, expects two things, does he not? One is a reasonable rate of return on his investment, made up of profits on the investment, and the other is return of capital.

Secretary Lujan. Correct.

Senator McClure. Do you recognize that business expects to have a return of capital, not just return on capital?

Secretary Lujan. Yes, sir.

Senator McClure. You understood what I said there.

Secretary Lujan. When they put it up, yes, sir.

Senator McClure. When they put it up. But you believe because it is on a Government reservation they are not entitled to the return of capital. That becomes the Government's capital.

Secretary Lujan. No, that is not the reason. The reason is because they are using our money to put it up, not because it is on the Government reservation.

Senator McClure. Using what money? What money did the Government put up?

Secretary Lujan. The percentage that should have been paid to the Government had a reasonable fee been charged.

Senator **McClure**. A reasonable fee been charged, and a reasonable fee being charged is one that would say—that investor says, I am not going to put up the money. So, we would have had a better rate of return on zero.

Secretary **Lujan**. No. We would have had the same thing that happens in private industry. If you owned a piece of property and I wanted to put a building on it and you did not want to sell it to me—I wanted to put a shopping center on it, we will say—what you would do, you would allow me for a certain fee to use that property to build that shopping center on which I could make a profit, and you would give me the right and the possessory interest for 50 years, we will say. At the end of 50 years when that contract was over, that shopping center is yours.

Senator **McClure**. That is certainly possible if that is the deal that is made at the beginning. But if instead of a building, you are talking about the kind of dispossession that is possible here. We say to that private—me as a property owner and you as the investor, because you have got money and I have not. I have got the property and you do not. I am going to get you to build a building on my piece of property, and you, coming in, will calculate your investment and your rate of return on that investment and decide what you need in a mix between the ownership of the property at the end of the term and return during the term. Is that not correct?

Secretary **Lujan**. Well, generally we would calculate the value of your land and give you 0.5 percent per month.

Senator **McClure**. Whatever it is, along with my expectation of a return at the end by way of increased value of a capital asset.

Secretary **Lujan**. You are exactly correct. If I could not get my value of the building back, plus a reasonable profit for me to live on during that period of time we would not do business. That is correct.

Senator **McClure**. Whatever your expectation, whether you say it is to live on or just because I am greedy and I want money.

Secretary **Lujan**. Either way.

Senator **McClure**. On both sides of that deal.

Secretary **Lujan**. We would have to agree.

Senator **McClure**. Yes, we would have to agree, and what you are suggesting is the concessioners ought to be forced to expect that they relinquish the title to their capital improvement at the end of the term.

Secretary **Lujan**. Not the one that they have now. In the new contract I would say to them——

Senator **McClure**. That would be your condition.

Secretary **Lujan**. On the new contract I would say, you have possessory interest on a declining level to the time when your contract expires.

Senator **McClure**. You could negotiate that kind of deal but that has nothing—it has no relevance to the investments that are already made. Am I correct?

Secretary **Lujan**. That is correct.

Senator **McClure**. So you expect that they do have their possessory interest as provided in the current contracts and under current law.

Secretary LUJAN. What they have now I cannot take away from them, Senator.

Senator MCCLURE. You are not trying to change that?

Secretary LUJAN. No.

Senator MCCLURE. What are you going to do on a concession when a park in which the concessioner looking at it says, well, that is not good enough, I cannot afford to make an investment on that basis?

Secretary LUJAN. Then I will say, let me see if I can find somebody who can.

Senator MCCLURE. Then if you cannot?

Secretary LUJAN. We will negotiate until we come to an agreement.

Senator MCCLURE. And you go out there and you look and you cannot find anybody to make the investment, you come back to the Congress and say, you put up the money. We cannot find it in the private sector, and so you do not get the money from Congress and you do not get it from private enterprise, and the concessioner facility is not built.

Secretary LUJAN. No. I am not coming back to Congress to request it. At some point, maybe it is advantageous, instead of having a 5-year contract that he have a 10 or a 15 or a 30 or whatever it takes to be able to entice them to build that building, but on a declining balance to the end of the contract.

Senator MCCLURE. And I am asking you this question very directly, and if after having done that you cannot find anybody who will make the investment on those terms, what do you do?

Secretary LUJAN. I believe I will find someone, Senator, because that is the way it is done in private practice.

Senator MCCLURE. It is in some places.

Let me ask you this, how are you going to get a big hotel built in Denali or do you want one?

Secretary LUJAN. If it is not a profitable thing for anybody, maybe it is not a good idea to build one if they cannot make any money on it.

Senator MCCLURE. Maybe you could get someone to do it if you say you have a possessory interest in that hotel.

Secretary LUJAN. And I will say that.

Senator MCCLURE. We are not going to take it away from you over a period of time. Whether it is 10 years from now or 20 years from now, you still own the hotel.

Secretary LUJAN. No, I would not want to go into a contract.

Senator MCCLURE. You would rather have the public unserved than sign that kind of a contract?

Secretary LUJAN. No. You know, what-if questions are very difficult to answer. My feeling is that yes, you could negotiate a contract that would accomplish that because it is done every day in the private sector and it should be no different doing business with the Federal Government. You have to provide a nice place for people to stay, both from the standpoint of our responsibility as stewards and the responsibility of the concessioner to make money for the company. So, I think you could do it.

Senator MCCLURE. You think you will be successful in every instance?

Secretary **Lujan**. I do.

Senator **McClure**. Well, all I can tell you, Mr. Secretary, is you will not be Secretary forever and we can correct some of the mistakes or excesses after you are gone.

[Laughter.]

Senator **Bumpers**. Which makes my original point.

Senator **McClure**. Which is not to say that I disagree with a basic premise up to the point, up to the point of recognizing that you cannot always get those facilities built on the terms you desire. That is a two-ended or two-sided negotiation. You have to persuade somebody in the private sector that making the investment is worth the risk.

Secretary **Lujan**. You do it by lowering the fee. It is a question of negotiation, Senator.

Senator **McClure**. But you left part of the negotiation out.

Secretary **Lujan**. Your bottom line is you do not want them to have a—what was the definition—sound value or whatever that figure was. They will have a possessory interest, but on a declining basis.

Senator **McClure**. And if they will not agree to sign that?

Yes, Mr. Ridenour.

Mr. **Ridenour**. Mr. Chairman, if I could just for a second. Certainly, it is not unusual in the private business world today to build a piece of property or build a building. I have done it myself, on property that someone else owns. And when that term is up it is no longer my building. I mean, it is gone.

Senator **McClure**. If the return of your investment is great enough that it will induce you to do that, and say that is good enough, sure, you will sign the contract.

Mr. **Ridenour**. And there may be cases where you cannot.

Senator **McClure**. Let us go back to that just a moment. What do you mean there may be cases when you cannot?

Mr. **Ridenour**. Well, if the deal is not good enough for me to make that investment pay out over the period of years that we are talking about then I will not make that investment.

Senator **McClure**. And that is exactly my point. If the return on that investment over that period of years is not good enough for you to make the investment, then the building is not built.

Mr. **Ridenour**. I would just say this from a Government standpoint, if it is not good enough for me as a private individual to make the investment, then I have to look at it, is it good enough for the Government to make an investment. And if it is not good enough for either one of them, then we should not make the investment in it at all.

Senator **McClure**. Let us look for a moment at the fact that maybe you do not have to get the return of your capital through the fees generated because you still have the capital asset. Is that not a legitimate business principle?

Mr. **Ridenour**. It is, and could I go one step forward with that, Senator?

Senator **McClure**. Yes.

Mr. **Ridenour**. I think that is the importance of what the Secretary has in here in terms of book value. If I could just give you a quick illustration. Book value means original cost less depreciation.

So, under the Secretary's instructions to me, as I understand it, if someone came to me and said, I am going to put $8 million into this building and build it on the property, we would have to work with that situation and try to come to an agreement. So, let us say we came to an agreement and we worked out a 10-year depreciation schedule. Anytime during that 10 years, which may be the period of time that they borrowed money to pay the bank back, they would have a possessory interest on a declining basis that would allow them, essentially, to pay off the bank if they are off the property.

Senator McClure. If they can generate that much return on their investment.

Mr. Ridenour. If they can. What that does is protect them from the Government standpoint. Let us say that we are four years into that 10 years and we find out that they are a lousy, lousy concessioner. Everything is bad, the rest rooms are bad, everyone is complaining about that situation. The Government would come in then and have the opportunity to say, we will buy you out at book value, which will take care of your bank loan and you are out. Or they would have the opportunity to have another investor buy their property.

Senator McClure. At book value.

Mr. Ridenour. No, they could buy it at market value, but we would look at the deal so there is no windfall situation.

Senator McClure. Well, there is a windfall under your circumstance if it is above market value or above book value.

Mr. Ridenour. Well, no.

Senator McClure. If we follow your reasoning.

Mr. Ridenour. The situation we have had in the past is we have seen some market value situations where someone would buy the property at a price that had a lot of blue sky in it, and what this report is essentially saying is, a lot of that blue sky was Uncle Sam's.

Senator McClure. That is what the Park Service has. There is a lot of blue sky.

[Laughter.]

Mr. Ridenour. That is right, and we are not getting paid for it when they make a deal and all the blue sky gets bought by a private company.

Senator McClure. That is fine if you can make a deal with somebody who believes that they can charge enough for their service in order to recover their capital as well as a profit on their investment during a period of time. That is great if you can make that deal. But I would also tell you that is not necessarily the best bargain for the public, because it also means the price for the service has to be the maximum.

Now, how does that help a family that wants to take their family to visit a national park and wants to stay in a facility built by a concessioner when you jack their fee schedule up so that they are guaranteed the return on their capital and the return of their capital in a fixed period of time?

Mr. Ridenour. Well, the other side of that equation is that our system also controls the prices that they can charge.

Senator McClure. Oh, sure, but you are not going to control the price to the point that they get no rate of return and get them to sign the contract.

Secretary Lujan. You would look at those things at the time you are negotiating.

Senator McClure. Of course.

Secretary Lujan. And each contract is——

Senator McClure. I agree with you.

Secretary Lujan [continuing]. Different.

Senator McClure. I agree with you.

Secretary Lujan. Some you have to allow a little bigger percentage of profit, some less depending on how much it is.

Senator McClure. But you are saying, right down to the point where they have got to admit at the end of the term they have zero value and they have to have returned all of their capital as well as the rate of return on their capital during that period of time.

Secretary Lujan. Not for what is there to date. For futures.

Senator McClure. But I am telling you right now that that does two things. For those that will pay out you have maximized the cost to the using public. Now, that may be fair, and may be what you want to do. In an elitist society that is great. But if you are trying to make those services affordable to the average working man or woman in this country who is trying to get to our national parks and enjoy the national parks, you want the fee structure as low as possible, the fee to use the facility, and you just maximized it, not minimized it.

Secretary Lujan. Not necessarily. Those are things that you take into consideration at the time of——

Senator McClure. No, Mr. Secretary, you and I will never agree on this because there is an absolute barrier between your mind and mine. I do not know whether it is in mine or yours, but we are not communicating because you are not listening. You are not hearing.

The second thing that you do is to say that a certain number of facilities under that structure will never be built. Mr. Ridenour said, well maybe they should never be built. Well, maybe then we should not provide the parks. Maybe we should de-create parks that by your test can never generate a return on investment or at least never have any visitors' facilities in them. Now, that is not my idea of good public policy. It may be yours, but it is not mine, and I hope that the Congress will not get to that point.

Senator Bumpers. I think the Secretary has to be at the White House at 3:30. Is that correct?

Secretary Lujan. That is correct.

Senator Bumpers. And I imagine that is going to be a quorum call momentarily.

So, I would just like to summarize a thought I have about this conversation that has been going on here. Number 1, when I was governor of my State I assumed that everything in that State that was not done on a competitive basis would land me in the slammer, and I get to Washington and I find out that there are all kinds of negotiated contracts around here. It is shocking to me, frankly, the way it is done.

Now, I tend to come down on the side of Mr. Ridenour. Take the hotel at Denali. You want to build a hotel there, you have several options. You can put out a request for bids on a 10- or 20-year contract, whatever you think, and you do not get a bid because nobody is willing to build that hotel because they do not think they can get a sufficient return on their money, at least under the terms that the Park Service is willing to render.

The Park Service can then decide to scrap the whole idea and go with another kind of contract without the hotel, or they can come to Congress and say, we think there is an aesthetic and national purpose here that would warrant us making an investment that the private sector is not willing to make. We do it all the time.

The Manassas Battlefield is going to cost an arm and a leg. I think it is outrageous, but that is another story. But my point is, we decided that there was a national, historical significance there that required the Federal Government not to let Robert E. Lee's headquarters be turned into a shopping mall.

And so it is in this case. And if Congress says, no, we are not going to put $10 million into a hotel in Denali, then that is the end of it. We have decided that it is not worth it. That does not seem unduly complicated to me.

Now, I have one last question that I would like to ask and that is, when you are negotiating a contract and you are saying the fee that you will pay us, we will say, is 2 percent or 3 percent, or whatever it is, how do you determine at that time what the requirement in dollars and cents in capital improvements will be? How does the concessioner who is entering into the contract, and how do you, arrive at an agreement with him as to how much money he is going to be required to put in to capital improvements? Likewise how do you decide what period of time will those investments be made?

Secretary LUJAN. Well, the instructions that I have given to the Park Service is that in negotiating that they take a figure, and I am going to use 22 percent now because that is a figure that—it does not have to be that.

Senator BUMPERS. We are going to send you a written question on that.

Secretary LUJAN. But let us take 22 percent and we say, all right, 5 percent of that is going to be a fee that goes into the General Treasury. Maybe we want to acquire some buildings from them that they now own, but we have to pay them for them if we want to acquire them, so we will take, say, 5 percent of that and give you credit for acquisition of the building. That leaves us 12 percent. That other 12 percent must be invested back into the park, and we will tell you how we want it reinvested.

Senator BUMPERS. So, it is normally based on a percentage of revenues that go into capital improvements, is that correct?

Secretary LUJAN. I would envision, you know, something along that line.

Mr. RIDENOUR. If I could just quickly add, the way that it would generally work out is each park has a general management plan or a master plan. So if the master plan would call for a restaurant, for example, to be built over the next 10 years, that might very well be the key then to part of the negotiations in terms of the fee and the construction of the restaurant.

Senator **McClure**. Let me just direct one cautionary word on that, because if the Park Service believes this is a way to generate a flow of capital that is outside the appropriations process, you will get away with it if it is not too large. You will never get away with it if it gets very large.

Senator **Bumpers**. They have been getting away with it for a long time.

Senator **McClure**. Not on capital flows.

Secretary **Lujan**. Yes, they have. That is really what has been happening, back door.

Senator **Bumpers**. Well, gentlemen, I can assure you that Senator McClure and I will both have several written questions to submit to you, and Senator Wallop also. And we will have the next hearing at the earliest possible time.

Mr. Secretary, Mr. Richards, Mr. Ridenour, we thank you very much for being with us.

[Whereupon, at 3:22 p.m., the hearing was adjourned, subject to the call of the Chair.]

[Subsequent to the hearings Senator Simpson submitted the following:]

ALAN K. SIMPSON
WYOMING

United States Senate
WASHINGTON, DC 20510-5002

September 4, 1990

Honorable Dale Bumpers
Senate Subcommittee on Public Lands,
National Parks and Forests
229 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Dale:

I would like to take this opportunity to express my thoughts on Secretary Lujan's proposed changes in National Parks concessions policies.

I believe that the Secretary's proposed policy changes could have devastating effects upon the financing, operation and success of these important visitor services. Because a substantial part of the investment in facilities for visitor services is made by the private sector -- and will be increasingly needed as government budgets continue to be tight -- I believe that we need to do all we can to encourage the involvement of the concessioners.

My understanding is that elements of the National Parks Concessions Policy Act are the framework for successful results in concessioner services. The Secretary's suggestions that we can remove the possessory interest as a security for the concessioner's investment and deny a satisfactory concessioner to pay substantially increased fees on short term contracts is unrealistic if we are to encourage private sector involvement.

I would respectfully request that you carefully review the Secretary's suggestions and weigh them with caution so that we do not scrap a system which seems to be producing good results. If fees need to be increased, I believe good operators can understand that need exists, but that it should be done within the system and not as part of an effort to destroy what has been strengthened over the years.

Warmest personal regards,

Most sincerely,

Alan K. Simpson
United States Senator

AKS/mvk
cc: Greg Smith, Signal Mountain Lodge

CONCESSIONS POLICY OF THE NATIONAL PARK SERVICE

TUESDAY, JULY 31, 1990

U.S. Senate,
Subcommittee on Public Lands,
National Parks and Forests,
Committee on Energy and Natural Resources,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Dale Bumpers, presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator **Bumpers**. Today the subcommittee is continuing the hearing we began last Wednesday to consider the concessions policy of the National Park Service.

Unfortunately due to activities on the Senate floor last Wednesday afternoon the subcommittee could not hear all the scheduled witnesses.

This morning we will hear from representatives of the park concessioners as well as from the presidents of two major conservation organizations which have been involved with the concessions issue for a number of years.

We welcome you to the hearing, and apologize again for not being able to accommodate you last week. We appreciate very much your willingness to appear on such short notice.

Senator Wallop, do you have an opening statement?

STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator **Wallop**. I do, Mr. Chairman. I want to thank you for scheduling this hearing, and I do appreciate your extra effort. It is important to me, as it is to the rest of America, and as a result of the first part of this hearing I realize that one item is seriously needed, and that is the reauthorization of the Visitor Facilities Fund Act. Within the next few days, I plan to introduce legislation which will amend Public Law 97-433.

The National Park System Visitors Facility Fund Act of January 8, 1983, established a fund in the Treasury, into which were credited all fees received by the Government from private concessioners in the National Park System. These funds were then available for appropriation back to the National Park Service for reconstruction and improvement of facilities used to provide food, lodging and other services to park visitors.

The 1983 act provided that improvement projects were to be accomplished by the National Park Foundation with grants from the fund. A total of $54 million was credited to the fund, of which $28 million was appropriated for improvement projects.

Authorities contained in the 1983 act expired on September 30 last year. Concession fees thereafter were covered in the Treasury as miscellaneous receipts and $26 million, which represents the unappropriated balance of the fund, was transferred to miscellaneous receipts at that time.

This legislation provides that the fund would be programmed, expended and accounted for directly by the Secretary of Interior rather than by the National Park Foundation, as was the case of the 1983 fund.

The need for a predictable source of funds to improve and maintain the commercial service facilities in the parks is greater now than in 1983. Nationwide, there are 540 concession operations in 130 units of the National Park Service System. These parks account for 78 percent of total annual visitation and concession facilities are where park visitors spend a significant portion of their visits, and these facilities must be both modern and safe. It is estimated that the cost of reconditioning all concession facilities, both Government-owned and concessioner-owned, is about $200 million.

I believe that enactment of this fund would assure that millions of visitors could have safe, modern facilities for food, lodging and other services.

I have, as you know, Mr. Chairman, severe concerns about the current concessions policy and the program as presented by Secretary Lujan, which were expressed in my opening statement submitted for the record. I will not take any more time of the committee to reiterate these concerns, but I do have questions, some of which I will submit for the record in writing.

I look forward to hearing from the witnesses this morning, and just would say parenthetically, Mr. Chairman, it is almost inconceivable that in times of tight budgets and other things that we would rely on the Government to pick up what the private sector has done so well for the park system over the course of time, and therein I think lies the fundamental flaw in what the Secretary is trying to do.

Thank you again for holding the hearing.

Senator BUMPERS. Thank you very much, Senator Wallop.

Mr. Maughan, I have you as number 1 on my list, so please proceed.

STATEMENT OF REX MAUGHAN, CHAIRMAN, THE CONFERENCE OF NATIONAL PARK CONCESSIONERS

Mr. MAUGHAN. Thank you, Mr. Chairman.

My name is Rex Maughan and I am appearing today before you in the capacity as the Chairman of the Conference of National Park Concessioners. Our organization represents the men and women and their companies which provide the necessary and appropriate visitor services in units of the National Park System, and we are vitally concerned with the subcommittee's review of these reports.

I am also the president and owner of Forever Resorts, which is involved in concession operations at Rocky Mountain National Park, Grand Tetons, Lake Mead National Recreation Area, Lake Amistad Recreation Area and also in Padre Island National Seashore, so my observations regarding the concessioners are certainly taken from my own personal involvement over the past 20 years.

I have consulted with my organization and members within it who are long-time people, and many of them have worked a lifetime—some 50 years or more—as concessioners serving the public in our great national parks.

I will not read my whole statement. I would ask that it be accepted in the record, and I would just like to summarize a few points this morning.

The National Park Concession Act, which we call Public Law 89-249, gives wide guidance in setting franchise fees based upon the probable value to the concessioner of the privileges granted, but with the limited consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas of the national parks and of providing adequate and appropriate services for visitors at reasonable rates.

Now, these franchise fees have certainly come under attack recently, and the Conference of National Park Concessioners firmly believes that concessioners ought to pay fair and reasonable fees for the privilege of doing business in the national parks.

Over the years, the conference has worked with the National Park Service to create various formulas to arrive at such reasonable fees. In recent years, fees have increased substantially as new contracts are up for renewal. We have no objection to this, as long as the overall congressional objective of ensuring that protecting the resource and service to the public at reasonable prices comes first. The Congress specifically provided that fee levels should be subordinate to this important goal.

Franchise fees must also be considered in the light of capital requirements for visitor facilities and in some cases National Park Service facilities which the Park Service requires concessioners to construct. These facilities must be paid for from the revenues, and if there are high franchise fees, financing will be impossible.

For example, the often-quoted 22 percent franchise fee that the Secretary has been recommending occurs in a situation where there is no capital investment by the concessioner. If a concessioner must pay for capital improvements, franchise fees of such magnitude would be devastating. In fact, we have done studies to show that probably 15 percent of the 22 percent would have to be borrowed from a bank in order to pay them, because the concessions themselves do not generate those kinds of fees.

Further, the Park Service carries out the congressional mandate to protect reasonable prices for the public by carefully regulating the prices that any concessioner may charge. We cannot raise the price of a cup of coffee or a hamburger without getting Park Service approval. This, in turn, restricts potential profits and ability to pay higher franchise fees.

There are some fees which appear low. However, it must be kept in mind that many of these operations are in remote places which operate in very short seasons, sometimes for less than 90 days. The fees are set to encourage business to be created in these difficult places.

The low fees in other contracts reflect the fact that some were entered into almost 30 years ago when the business climate in the parks was substantially different. As these contracts come up for renewal, the fees are being increased.

Further, a provision for increasing the fees at the discretion of the Secretary of Interior every 5 years is being incorporated into these contracts, so the fee level will be kept consistent with changing circumstances.

All of these factors—congressional priorities, heavy regulation, seasonality, and capital requirements by the National Park Service, make doing business in a national park a very special situation. Thus, comparisons to some unregulated or unrelated industry standards are entirely inappropriate.

Claiming that the Government has lost franchise fees that do not meet these arbitrary standard is misleading, and the papers have been quoting the Secretary as saying that millions of dollars have been lost from the $500 million of profits the concessioners have been making. That is absolutely absurd. $500 million is the gross receipts that all the concessioners receive, and is certainly not our profits, and not very much of it is profits.

Then the Secretary has been attacking possessory interest. When the Congress passed the National Park Concessions Policy Acts they made a realistic recognition of the need for private sector capital investments in any structure, fixture or improvement within an area administered by the National Park Service by granting to the investor a possessory interest as security for the investment, and for its sound financing, with legal title remaining in the United States.

Long-term contracts were utilized to allow an opportunity for adequate time for a reasonable return on profit and on investment. It is a security interest, and the title of the property continues in the United States. This is far less security than investors receive in an investment outside the park.

It is needed today to make possible financing of needed improvements. Possessory interest should continue to be worth what the law defines as sound value: replacement cost less depreciation, but not to exceed fair market value. It is unfair to reduce it to depreciated book value, as the Secretary has recommended, which eventually goes to zero, otherwise you have discouraged investors from putting their money in parks.

Now, I can give you an example of my own right out at Lake Mead National Recreation Area in Colville Bay, where in the last 3 years I have put $5 million in a new marina, new buildings and new facilities because the demand by the public warranted them, and I had to borrow $4 million from the bank.

Without a letter from the Park Service that I had a possessory interest in those facilities, the new ones that I was going to build and the ones that I already had, and that I would have the preferential right to renew that contract that was coming up in 2 years, no way would the bank have ever given me any money to build those facilities.

Now the Park Service uses that as a model. Anybody that wants a new marina, they ask them to go out there and look and see what a beautiful marina is there and try to model after it. Without having those securities in the law, I would not have been able to build those, and of course that is what is going to be discouraged in the future if his proposals are put into effect.

Now, preferential right of renewal has been under attack. It is an incentive for meritorious performance through requiring the Secretary to encourage continuity of operation of facilities and services by giving preference in the renewal of the contract to the concessioner who performs their obligations to the satisfaction of the Secretary. It is not necessary to reinvent the wheel, with new people adjusting to the Park Service controls.

This provides concessioners the ability to attract and keep staff that is career-oriented towards the national parks. It gives the concessioner the incentive to invest capital with the security of continued operation

I want you all to know that it would be terrible for us to try to keep good employees. We would be getting the low end of the spectrum when we interview people if we did not have this preferential right to renew, because as you know, with everything that is hitting the press, it has not been exciting to be a concessioner these last few years.

Now, in the hearings that took place last Wednesday, it was said, why should the Government have to buy out concessioners' assets at fair market value? They do not, unless they do away with the concession, is the only time the Government would ever buy that out. You can count on my one hand the number of times that has ever happened in my lifetime, and some of those were forced, unfortunately, because of people who did not understand the system.

Now, Secretary Lujan has been quoted in the press that the Government has lost all these millions of dollars from the $500 million profits, and as I said earlier, that is absolutely a misnomer, because the $500 million is the total receipts received, and you have to realize that it is very expensive to operate in these remote areas in such short seasons, and some concessioners do not make a profit. Some barely make a small living for the whole family who works there in those parks.

On December 10 we met with Secretary Lujan, where he said that he wants all concessioners to pay 22 percent fees. Most concessioners, as I said earlier, would have to borrow the majority of that—at least half of it—in order to be able to pay them without having any return on the investment that they have put into it.

Yes, I guess, Mr. Chairman, as you mentioned last Wednesday, I think I have been correctly quoted—when the Secretary said last week that he wanted 5 percent of that 22 percent to go into a fund where he could buy our buildings, now, I guess I would say I have been correctly quoted when I said I think that principle is un-American.

Secretary Lujan said he wants 5-year contracts. Well, last week when we were talking and he was questioned, he said that on the outside of the parks it would be usual to have a 50-year lease if somebody else owned the land, like the Park Service does in our concessions, paying one-half of 1 percent fee per month. Now, that is 6 percent annually versus 22 percent. Why the difference for concessions?

In December, Secretary Lujan put a 90-day moratorium on new contracting for the Concession Management Division for the National Park Service. Here we are, 8 months later, and the National Park Service is still on hold, and the esprit de corps of those people in concession management is at an all-time low.

I think that you should be recommending to the Secretary to please put the concession management people back into business now, and let this committee and the rest of Congress review the policies that have been made, and if there is any needed changes that you will take care of those.

In summary, the wisdom of the partnership formed many years ago between the National Park Service and the private sector concessioners has been borne out through time and experience as a sound method of providing visitor services in the innards of our national parks. Early leaders of the National Park Service, previous Secretaries of Interior, and committees and Members of Congress have studied this matter over many years and endorsed the partnership.

The Congress codified the practices and policies they deemed most important upon the advice of the National Park Service in 1965 with the National Park Concessions Policy Act, and it remains today as sound policy. Adjustments have been made in regulations over the years, but changes have not been deemed necessary in the law, nor do present circumstances require amendments to that act.

Higher franchise fees will come as a result of future contract negotiations, and the present law that allows it to be renegotiated every 5 years.

We are deeply concerned that the system will be substantially weakened with the devaluation of concessioners' investments, known as possessory interests, from the statutory sound value down to depreciated book value, which goes to zero. That is not fair to present investors, and it will discourage future investors at a time when they are most needed.

The meritorious incentive for satisfactory concessioners to receive a preference in renewal has worked to the benefit of the National Park Service, the visiting public and to the concessioners. Good business organizations which will adjust to the needs and regulation of the National Park Service should be encouraged to continue. If their conduct is not satisfactory then they shall have no claim on the preference and no one is harmed.

All of the other elements of the present act which I have discussed in my presentation and in my statement which has been submitted clearly shows that the interrelated and intertwined nature of the various duties, obligations, rights and incentives which Congress wisely enacted—without recounting all of those provisions, suffice it to say that they should not be lightly cast aside, because together they have made the system worked well, have produced great results, and we have the greatest system in the world.

If there is any other valid reason to move cautiously in reviewing possible changes in the present system, it is contained in the Secretary's response to a reporter's question at his present conference two weeks ago. When asked what is wrong with the present system, he responded, "Nothing, except concessioners should pay higher fees and have more competition."

He elaborated that concessioners perform well and he is pleased with their services. There is no valid reason for considering radical changes in a system that has produced that level of acceptable performance, as judged by the Government official charged with the responsibility to make that judgment.

I appreciate this opportunity to make this presentation today. I would be pleased to submit any other information you need, Mr. Chairman, and would be happy to respond to your questions.

Thank you.

[The prepared statement of Mr. Maughan follows:]

PREPARED STATEMENT OF REX MAUGHAN, CHAIRMAN, CONFERENCE OF NATIONAL PARK CONCESSIONERS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is Rex Maughan and I am appearing before you today in my capacity as the Chairman of the Conference of National Park Concessioners. Our organization represents the men and women and their companies which provide the necessary and appropriate visitor services in units of the National Park System and we are vitally concerned with the Subcommittee's review of these Reports.

I am also the President and Owner of Forever Resorts, which is involved in concessions operations at Rocky Mountain National Park, Grand Teton, National Park, Lake Mead National Recreation Area, Lake Amistad National Recreation Area and Padre Island National Seashore. My observations regarding concessions business are taken from my own personal involvement over the past 20 years, part of which I served as an executive of a major company, before my present ownership of concessions operations. Many in our organization whom I have consulted in preparing my remarks have worked a lifetime - some 50 years or more - as concessioners serving the public in our great National Parks.

Our organization welcomes this opportunity to discuss with you concessions policies in the National Parks but, as you know, because the Inspector General's Report contains information of a proprietary nature which has always heretofore been exempt from disclosure under the Freedom of Information Act, as ruled by the Solicitor of the Department of Interior, and various Federal courts, its proposed release in this Report has become the subject of current litigation before the Federal District Court of the District of Columbia. We would hope that the Subcommittee, in the exercise of its discretion, would not feel it necessary to engage in a discussion of the affected proprietary financial information. However, I am prepared to discuss the broad policy questions raised in the Report and to discuss the procedure and method utilized.

Following that I am prepared to discuss the Task Force Report and the Secretary's Policy Directions, which he announced last week and which form his outline of recommendations from both of these Reports being reviewed by the Subcommittee today.

Inspector General's Procedure and Method

When Secretary Lujan informed our organization of his intent to ask the Inspector General to make such a report last December, we were specifically told that we would have adequate opportunity to make substantial contributions through interviews and providing information for the benefit of the Inspector General. As the time began passing for the production of the report, we understood that the Inspector General's staff would be visiting the various units to be studied and would contact the concessioners for their input.

We know of only three instances where this occurred. These contacts took place at Yosemite National Park with Yosemite Park and Curry Co., at Lake Powell with ARA Leisure Services, and at Grand Canyon National Park with Babbitt Brothers. In all of these interviews our members tell us that the time spent was very minimal, few questions were asked and very few requests for documents were made. Those contacted felt that the interviews represented only a very meager effort by the Inspector General to hear concessioners' views or to discuss matters with them.

As we study the Report of the Inspector General, it is our strong feeling, as it would be with any like group to be studied and analyzed, that if those whose businesses are being scutinized are, for the most part, never even contacted and only three are given the most cursory treatment, then there is little hope that the report could be objective in fairly presenting a balanced view of any problems perceived. Instead, our fear is that the report has been prepared in relative isolation from many facts needed for full evaluation, relying mostly on the figures filed confidentially in government reports. No concessioners were ever given an opportunity to confront the study team in a discussion of their conclusions.

Since there had been such a lack of communication by the Inspector General and his study team, our organization invited them to meet with our Board of Directors during our Annual Meeting last March here in Washington. After they had accepted our invitation and appeared at the meeting, we were shocked to hear that they could not discuss the report with us. I attended that meeting and I must tell you that it was the most hollow meeting ever held, with our members suggesting legitimate subjects for discussion, only to be told by the Inspector General's team that they could not comment at all.

Not only did our organization find the procedure employed by the Inspector General to be deficient, but the National Park Service made similar complaints in the Memorandum of Director James Ridenour, dated March 29, 1990, found in the Appendix of the Report.

Director Ridenour observes: "However, we believe that some findings listed in the report may have been developed without the benefit of complete information. We understand that time constraints prohibited a more thorough review of additional information, much of which is available only at the regional and/or park levels of the National Park Service (NPS)." Very limited contact was ever made at either the regional or park levels of NPS and an adequate and fair survey of the concessions policies cannot be fairly accomplished by such a peripheral view. I will quote later in my statement again from Director Ridenour's Memorandum regarding one of the Report's specific findings.

Inspector General's Claim of Inadequate Franchise Fees

Much is said in the Inspector General's Report regarding the claim that the "National Park Service did not receive adequate percentage fees from the larger concessioners operating in the National Parks." And further, "...the Park Service did not receive additional percentage fees ranging from $12.5 million for 1988 (using Washington Office analyses of 14 contracts) to an average of $16.7 milllion (using Dun and Bradstreet published data.)" Based on these calculations the Inspector General goes on to project greater losses in the future.

As the Members of this Subcommittee know, the statute does not dictate a certain percentage fee to be annually assessed against a concessioner. The statute clearly gives guidelines but leaves the determination of the fee to be negotiated as one of the many terms of the contract.

The National Parks Concessions Policy Act (P. L. 89-249) gives wise guidance in setting the franchise fee based on "the probable value" to the concessioner of the privileges granted but with the limit that the "consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates."

The setting of franchise fees under these provisions of the Act provide an excellent illustration of the interwoven and interlinked nature of its provisions. While the Congress required a franchise fee, still the considerations of revenue were to be secondary to the higher objectives of protecting park resources and serving visitors at reasonable rates.

Concessioners understand that they must be prepared to pay reasonable franchise fees and that these fees are continually escalating upward as new contracts are written or as franchise fees are subject to review each five years.

We sense that the Inspector General in his Report and the Secretary in his Policy Directons, may be frustrated because the calculation of concessioners' franchise fees is not an exact science. The Congress contemplated in the law that each contract situation requires varying considerations, depending upon the needs and programs of that particular park. At a time when appropriations for government investment in National Parks infrastructure is quite restricted, the National Park Service has asked more from concessioners and in most instances they have responded well. The source for those investment dollars is the same as that which provides dollars for increased franchise fees, so there must be a recognition of this reality.

In order for the system to work fairly, the negotiation of franchise fees, or their increase, cannot become an isolated exercise with no recognition of the other interlinked factors such as investments and other requirements of the contract. In that way, weighing all of the obligations of a concessioner, a fair balance can best be found making it possible for concessioners to remain financially healthy and able to respond to the many demands of the partnership.

With the understanding that the setting of franchise fees is a matter of contract negotiations, not a dictated term from a computer terminal in Washington headquarters, it is impossible to reach the conclusion which the Inspector General does in his Report as to "lost revenue". Fees that have never been negotiated and have not become the term of any contract cannot be said to be "lost revenue" to the government any more than an early figure in a wage dispute could be counted by workers as "lost revenue". The Report errs in making it appear that fees which are legally due and owing to the United States have not been collected. That is not true and is very misleading.

When Director Ridenour reviewed the Inspector General's Report, he commented on this mistaken calculation by saying: "Technically, we understand how the figures of $12.5 million and $16.7 million were calculated but do not agree with the figures. Most of these fees cannot be considered lost revenue because they were not due and owing. Additionally, a portion of these amounts were collected in the form of value added to the park system. In some cases, improvements to benefit the visitor and to protect the natural and cultural resources of the parks were paid for by the concessioner in lieu of higher franchise fees."

One of the provisions in concessions contracts calls for a five-year review of franchise fees. The National Park Service has certainly performed their duty well in working to increase fees, within the guidance and limitations of the law. If some fees seem low it may be due to the time frame in which they were negotiated or it may relate to other obligations which were required of the concessioner in negotiations. There is a limit to the numbers of dollars available to even the most successful business operation to pay franchise and building use fees, maintenance and repair items, and substantial capital investments. The negotiations are the place for all of these factors to be considered and balanced.

The Fallacy of Dun and Bradstreet Industry Norms

The argument for so-called "lost revenue" in the Inspector General's Report relies heavily upon franchise fee recommendations from the NPS Washington Office which were calculated using the Dun and Bradstreet industry norms. The truth is that the Dun and Bradstreet industry norms do not fit the National Park concessions business and are not norms for this industry. They are distorted by reason of heavy influence from franchise operations where fees are charged but no management takes place and other such distortions making the comparison meaningless.

We believe the methodology is flawed because of the vast differences in the kinds of businesses included in the D&B data and the kinds of operations in National Parks.

The franchise/royalty business distorts the base because it is not an operation business such as Marriott, Ramada, etc. Because of these differences in ownership structures, financing bases, income tax positions, stages of corporate development and accounting practices, comparability by profitability between NPS concessioners and industry norms are not valid. Mechanically forcing a concessioner's return equal to an industry-wide median return reduces all incentive for good management, amounts to a 100% tax on profits above the median, is a confiscatory taking of property without due process of law, and will ultimately result in lower revenue to the government, since an enterprise which doesn't make profits doesn't pay income taxes, a far greater impact on federal government funding.

Several of our companies have suggested that the Pannell, Kerr, Forster's data is much more reliable than Dun and Bradstreet's industry norms. If comparisons must be made, then a data base more closely comparable to NPS concessions operations should be utilized.

Building Use Fees

Concessioners now pay building use fees for the use of facilities which have been arrived at by contract negotiation. If the fees are deemed unfair, they should be addressed in the context of contract negotiations and not singled out as a lone contract element to be altered. Building use fees have increased in many instances, but they should never be considered as the equivalent of rents for a commercial shopping mall or businesses located in the main stream of local business activity.

Capital Improvements

The practices cited by the Inspector General as reductions of franchise fees in lieu of capital improvements grew from the frustrations within the system for needed funding from federal sources which has often been delayed. There has been a movement toward increasing concessioners' capital investments in National Park facilities simply because it was a viable alternative to management without those improvements. It is unfair now, with most of those investments providing needed facilities, to look in hindsight and conclude that NPS should have patiently waited out the huge backlog of needs to be satisfied so that ultimately those improvements might be made by public funds.

Discussions are heard from time to time of a revival of the Visitor Facilities Fund. Perhaps it should be reviewed further to determine the weaknesses which were uncovered during the previous authorization.

Contract Awards and Renewals

It is appropriate that more publicity be given to concessions opportunities and the Inspector General's recommendations for more advertising are valid. However, additional publicity should be directed at areas likely to draw interested response.

The history of the preferential right for renewal in the statute shows that this provision was enacted as an incentive for superior performance and as a means of assuring continuity of good service to the public. The recommendation for the elimination of this incentive is shortsighted and incorrect. Redefinition of it to reduce its impact is not consistent with the legislative history of the provision nor with the several Federal court interpretations which have been given over the years.

Summary Comments on Inspector General's Report

The Inspector General's Report reflects a very limited view of National Park concessions contracts. It is unfortunate that through all of the effort and time spent in pursuing this study that a more thorough examination of concessions was not performed. Very limited input from the National Park Service was received and virtually no consultation, despite the Secretary's assurance, was scheduled with the National Park concessioners.

Without a more comprehensive and professional treatment of these aspects of concessions contracts, it is unfair to draw such sweeping conclusions as contained in the Report. Certainly no major policy changes should be advanced on such a poor and weak base of information and study.

Overview of the Secretary's Task Force Report

Since the Subcommittee is now only concerned with the Inspector General's Report but the Secretary's Task Force Report as well, it is now appropriate to turn to its results.

Representatives of our organization were given an opportunity to meet with the Task Force on February 8, 1990 and later submitted written recommendations to them. The Report was published on April 9, 1990 but not available to us until May 24, 1990. Since that time we have prepared a Response to the Report and have discussed the results with Secretary Lujan.

Time will not permit full review here but we will highlight our comments under appropriate topic headings.

Partnership Between the National Park Service and Private Sector

Before discussing the specific recommendations of the Secretary's Task Force on National Park concessions, it would be wise for us to recall the history of concessions and how the partnership was formed.

As early as the formation of our first National Park at Yellowstone in 1872, the Congress declared the role of the private sector to provide necessary visitor services. When the National Park Service was founded in 1916, the practice was continued and the policies to implement it evolved over the years. The first Director of the National Park Service, Stephen Mather, stated in a classic way the philosophy of the founders when he said on this subject:

> "Scenery is a hollow enjoyment to a tourist who sets out in the morning after an indigestible breakfast and a fitful sleep on an impossible bed."

After many years of experience, with different systems being tried and changed, and after many years of studies by the Department of Interior, National Park Service, and Congress, those policies that were deemed most successful and important were codified by the Congress in the National Park Concessions Policy Act of 1965 (P. L. 89-249), which continues today as the sound policy governing concessions policies.

National Park Concessions Policy Act of 1965 (P. L. 89-249)

This Act was authored by the distinguished Chairman of the House Interior and Insular Affairs Committee, Congressman Morris K. Udall of Arizona. After much consideration by Congress, the Udall bill received broad bipartisan support and it passed into law with large majorities in both the Senate and House and was signed by the President in October, 1965.

A summary of its major provisions include:

1. A strong endorsement of the partnership between the National Park Service and the private sector concessioners, directing the Secretary of Interior to "take such action as may be appropriate to encourage and enable private persons and corporations to provide and operate facilities and services which he deems desirable for the accomodation of visitors in areas administered by the National Park Service."

2. A realistic recognition of the need for private sector capital investments in "any structure, fixture, or improvement...within an area administered by the National Park Service", by granting to such investors a "possessory interest" as security for the investment and for its sound financing, with legal title remaining in the United States. Long-term contracts were utilized to allow an opportunity for adequate time for a reasonable return on investment.

3. A wise standard of comparability was established to assure "reasonableness of a concessioner's rates and charges to the public", while at the same time, the Secretary was directed to "exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole..."

4. The payment by concessioners of a franchise fee to be negotiated in each contract, based on "the probable value to the concessioner of the privilege granted..." but with the appropriate guidance that the "consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates."

5. An incentive for meritorious performance through requiring the Secretary to "encourage continuity of operation and facilities and services by giving preference in the renewal of contracts...to the concessioners who have performed their obligations...to the satisfaction of the Secretary", still requiring the Secretary to give "reasonable public notice..." and to "consider and evaluate all proposals received."

(Emphasis added with direct quotations from the Act)

The National Park Concessions Policy Act is an integrated system of many vital elements, intewoven and interlinked for valid reasons. It provides the basis for the current wise division of responsibilities between the professionals of the National Park Service, who manage and direct the preservation and use of our National Parks and the professional business services provided by the concessioners for the visitors, under the close regulation and supervision of the National Park Service. It has produced a combination of many successful milestones and improvements along the way. While there is a substantial record of accomplishment under the system, we recognize that there can always be improvements because we have participated in many. But we respectfully suggest that improvements should be made within the framework of the present Act and that it should not be lightly abandoned nor its importance in the success of the system overlooked.

Response to Task Force Recommendations and Secretary's Policies

While this Response will not comment on every recommendation in the Task Force Report, I will emphasize a Response to those recommendations which Secretary Lujan has recently announced in his Policy Directions.

1. Franchise Fees

The Task Force Report recommends that "Fees should be changed as contracts come up for renewal and in many cases raised. Total return to the Government should be calculated, taking into account the investments and services that are now provided to the parks in lieu of higher fees."

Secretary Lujan's Policy Directions state that the "contractually obligated returns to NPS should total approximately 22 percent of expected gross revenues."

While we recognize and accept the fact that franchise fees will be increased through negotiations in the future, we believe it is important that the guidance of the Act be followed so that the "considerations of revenue...shall be subordinate to the objectives of protecting and preserving...and providing adequate and appropriate services for visitors at reasonable rates."

Especially is this true when one examines the 22% suggestion. The statutory guidelines do not prescribe a fixed percentage fee formula for the very reason that this must remain as an important properly negotiated contract element.

The Secretary's suggestion of a 22% standard is drawn from a misunderstanding of the present contract with one of the concessioners at Yellowstone National Park. That contract came about because the government acquired all of the facilities several years ago when a failing concessioner was bought out. Since the government owns all the facilities and equipment, a service or management type contract was deemed advisable. The concessioner pays an annual amount equal to 22% of the gross revenues, which is in lieu of any franchise fee or building use fee. It goes into a capital investment and repair and maintenance program entirely serviced by the National Park Service. The concessioner has use of the structures and all equipment, including any replacements of needed equipment, and all repairs, maintenance and capital improvements of any kind are paid from the fund. Up to the present time, no funds have been paid to the General Treasury, but all funds are consumed in the program. Because the government has all of the responsibility for running the program, considerable oversight is required by the National Park Service in this type of contract and while it may have been the appropriate way to handle the situation at Yellowstone, it is not a model that fits other locations.

One other factor should be remembered in setting franchise fees. Because all pricing is linked to a standard of comparability, which we support, the concessioner cannot pass on increases in fees and operating expenses to the public, as is so often the case in normal business activity. As you know, but which the public may not realize, all items and services provided by the concessioner are first requested by the National Park Service, and the pricing, locations for sales, and hours and seasons for sales, are carefully regulated by NPS. It is a carefully regulated business with a particular set of rules.

2. Reasonable Opportunity for a Profit

The Act states that the Secretary is directed " to exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole..."

While both the Task Force Report and the Secretary's Policy Directions repeat the statutory statement as a Principle for Concessions Management, there is some language in each document to question whether the policy supports the principle. For instance, the Secretary's Policy Directions indicate that "Other factors being equal, the concessioner's profits should be approximately equal to the median of the similar industries."

We have heard discussion from the Secretary that he felt, based on what he called a Dun and Bradstreet profile of like businesses, that the median profit for National Park Service concessioners should be 2.8% of gross revenues. We have protested that this figure is unrealistic and is not based on comparisons of similar businesses, but rather widely divergent businesses operating in entirely different commercial settings.

It appears to us that the Secretary has confused the statutory directive of the "concessioner's reasonable opportunity for a profit" with his concern over what constitutes "reasonable profits" for concessioners, a subject never contemplated by the Congress in writing the law.

Setting fees so that a concessioner's return would be at a "median figure" removes all incentive to perform well, which is the same motivation which must be present to serve the public well and handle all other responsibilities under the contract.

The subject of controlling profits, by whatever means or suggestions, is far afield from the intent of Congress. That type of control should have no place in our system of free enterprise. Indeed, quite to the contrary, the Congress directed the Secretary to policies which would provide a reasonable opportunity for a profit, so that fair fees can be returned to the government, so that funds are available to assist with capital improvements, in addition to paying a fair share of local, state and federal taxes.

3. Possessory Interest

The Task Force wisely recognizes the need and importance of possessory interest but then reduces its value from the statutory definition of "sound value...determined upon the basis of reconstruction cost less depreciation...but not to exceed fair market value", to an unfair standard of depreciated book value. The Secretary's Policy Directions endorses this recommendation. Further, the Secretary would deny possessory interest in any investments which were negotiated in lieu of higher franchise fees.

To propose now to "devalue" possessory interest from the "sound value" standard of the statute, to depreciated book value is not fair to investors who have, in good faith, made those investments in reliance on the statutory standard. As to the effect of the proposed change on future investments, it will definitely have a chilling effect on the interest of future private sector investments. Why would a private investor desire to put his money into an investment where his only security is to receive in return the depreciated value of his initial cost?

It is analogous to being informed by the highway department that your home will be taken by the government for a highway improvement and that you will be paid for your home, but not what it would cost to replace your home, less depreciation, but what you originally paid for your home, less depreciation! No one would stand for such treatment and fortunately our laws and court decisions require that you must be paid fair market value for your investment. Why should an investment made in a National Park be treated differently?

The Congress never intended different treatment for the valuation of park investments and there is no valid reason to change now after the success of over 75 years of this partnership.

4. Preferential Right of Renewal

The Task Force Report recommends that the statutory provision granting a meritorious incentive to satisfactory concessioners in the form of a preferential right of renewal be changed to a discretionary right. Secretary Lujan's Policy Directions indicate that he desires to redefine the right, if he can, by a change in regulations.

After long experience the National Park Service found that continuity of service was an important aspect of concessions and that it was far more beneficial to encourage competent concessioners to continue in business than it was to frequently bring in new business organizations and slowly move through a period of uncertainty, training and orientation. Therefore, one of the recommendations received by the Congress when the Act was written was that an incentive, conditioned on the NPS rating of being a satisfactory concessioner, in the form of a preference in renewal, was proper and needed.

The failings of the present system to attract more responses for concessions business opportunities are blamed on this preference in the law. That is not valid because many improvements could be made, as has been suggested in the Report, in the method and style of advertising and directing it more to groups likely to respond.

It should be recognized, however, that experience has proved that a bidding battle, surrounded by intense commercialism, does not identify the most worthy concessioner. What is gained if a business organization makes impossible boasts about their intentions on a proposed concessions contract and receiving the contract fails in the light of realistic economic conditions? This only makes it more difficult for honest, open business organizations to succeed, even though their responses are based on real, not fanciful, expectations.

Another factor to be recognized is that the demands on concessioners is great and only competent and financially responsible operators can respond to safety programs, sanitation programs, interpretation programs by concessioners, NPS-48 rate compliance, insurance requirements and many more. All of this suggests that concessioners must be of substance and must command significant resources. It also explains why some concessions are large companies, not because they may be owned by a major corporation, but because operating many concessions in large parks is a complex business requiring significant resources and expertise.

5. Preferential Right to Additional Services

Another of the meritorious incentives which Congress wisely placed in the statute is the preference to provide additional services. To the credit of the National Park Service, this discretionary right has been placed in most concessions contracts, until recently, because it does make good business sense.

We are in strong disagreement with the recommendations of the Task Force Report and the Secretary's Policy Directions that this right should not be included in contracts unless it is found in the public interest to do so.

This is a good example of what happens to a discretionary right in the law when a mistaken policy advises against its use. The standard in the law for its use - the public interest - is so vague and undefined that it becomes not the public interest at all that determines its use, but the subjective judgment of each Secretary, or the delegated judgment of the National Park Service personnel.

The legislative history records that this provision was included, following NPS recommendations, because it would work to reduce competing, overlapping services, requiring larger land areas and more park resources. The centralization of NPS supervision over one concessioner, rather than several, was also cited as an advantage.

The implementation of this provision is totally in the control of the National Park Service. They determine the additional requirements and the response is to that outline.

The Report and the Secretary should be citing this provision as a wise policy providing a source of strength, held in reserve perhaps in an emergency or to meet unforseen circumstances, as determined by the National Park Service. The failure of NPS to have anticipated some future need, could easily bring more criticism, than the inclusion of this right in a contract as an incentive for the concessioner to be prepared to respond to future additional services as a precaution.

6. Length of Contract Term

While the Task Force Report recommends "the shortest practical period" for concession contracts, with the provision that 15 years would normally be appropriate, the Secretary states in his Policy Directions, that contracts over 5 years must be approved by the Director and in his answers to questions has responded that he personally favors 5 year contracts.

Investing in a National Park could seldom be regarded as one of the safest nor most secure investments, because of the shortness of seasons, the uncertainties of weather, fluctuations in consumer spending for recreation, supervision by a public agency, the vagaries of government and politics and the shifts in public policy, to mention only a few.

For those reasons of uncertainty which are often present, there should not be added the doubts surrounding an inadequate contract term. The term should be made in a manner consistent with the requirements being made of the concessioner. In order to secure adequate and proper funding for facilities or their improvement, the contract term must be of sufficient length to allow for that debt to be carried and serviced properly. Thus in many cases a contract term of 20 to 30 years has been appropriate and in other cases a shorter term would be justified.

There are also considerations for concessioners to have time to build an organization which can respond to NPS needs, requiring the building of a strong service concept, which can attract and hold competent employees. This cannot be done in a short-term contract but requires contract terms to suit the needs of that particular situation, giving adequate time for success.

The suggestions of either the shortest practical period or a firm 5 year term do not accomodate the needs of realistic contract lengths required in concessions contracts.

7. National Park Facility Funding

Both the Task Force Report and the Secretary's Policy Directions indicate dissatisfaction with present methods of funding National Park facilities. They both indicate that arrangements for some concessioners for these investments on an informal basis should be replaced with a more formal structure "as part of the total return to the government calculations."

It is not clear just what this language means but we feel that concessioner investments have been very important to the stability of the National Parks. If the suggestion means only that it should be more formally recognized the total investment that the private sector makes in National Parks, then we certainly concur.

It may be true that concessioner's investments have at times been substitutes for public funding but that has saved millions of taxpayer dollars. Presumably the only current objection to such investments is that, under the law, a security interest in the form of possessory interest is granted the concessioner. But if the investment is needed and the private sector handles it, why isn't it proper to secure the investment, as the law outlines?

Until the National Park Service is able to work out some better way of funding these facility improvements, the policy ought to be guided toward encouraging private investment, not discouraging it.

8. Contract Transfers

We understand the value of requiring transfers of concessions contracts to be approved by the NPS Director, as is the present practice. However, the Secretary's Policy Directions indicate that "transfers resulting in windfall profits will not be approved."

Obviously, it is difficult to determine what profit on such a private sale would constitute "windfall profits", if any. The Task Force Report blames such so-called "windfall profits" on possible contract terms that have been "less than favorable to the Government." If there happens to be a profit made in the private sale of business assets, could it just be as likely, if not more so, the result of sound business practices, rather than because the business did not treat the government fairly? We certainly think experience proves that fact.

The sale of concessions assets and the assignment of concessions contracts should continue to be the subject of National Park Service approval but such approval should focus on the prospective buyer, its operational abilities and its financial capabilities. The purchase price and any profits realized by the seller should continue to be properly the province of the open market place, between willing buyers and sellers. It would be unfair, if not a breach of contract terms, for the National Park Service, to unilaterally amend a binding contract in order to impose changes prompted by the transfer. The refusal to approve the transfer of the contract, likewise should not be dependent upon the amount of profit, if any, realized by the seller.

Summary and Conclusions

The wisdom of the partnership formed many years ago between the National Park Service and the private sector concessioners has been borne out through time and experience as a sound method of providing visitor services in units of our National Parks. Early leaders of the National Park Service, previous Secretaries of Interior, and Committees and Members of Congress have studied this matter over many years and endorsed the partnership.

The Congress codified the practices and policies that they deemed most important, upon the advise of the National Park Service, in 1965 into the National Parks Concessions Policy Act (P. L. 89-249) and it remains today as sound policy.

Adjustments have been made in regulations over the years but changes have not be deemed necessary in the law nor do present circumstances require amendments to the Act. Higher franchise fees will probably come as the result of future contract negotiations and the present law allows for that.

We are deeply concerned that the system will be substantially weakened with the devaluation of concessioners' investments known as possessory interest from the statutory "sound value" down to depreciated book value. That is not fair to present investors and it will discourage future investors at a time when they are needed.

The meritorious incentive for satisfactory concessioners to receive a preference in renewal has worked to the benefit of the National Park Service, the visiting public and the concessioners. Good business organizations which will adjust to the needs and regulation of the National Park Service should be encouraged to continue. If their conduct is not satisfactory, then they have no claim on this preference and no one is harmed.

All of the other elements of the present Act which I have discussed in my presentation clearly show the interrelated and intertwined nature of the various duties, obligations, rights and incentives which Congress wisely enacted. Without recounting all of those provisions, suffice it to say that they should not now be lightly cast aside because together they have made the system work well and it has produced good results.

If there is any other valid reason to move cautiously in viewing possible changes in the present system it is contained in the Secretary's response to a reporter's question at his press conference. When asked what was wrong with the present system, he responded: "Nothing - except concessioners should pay higher fees and have more competition." He elaborated that concessioners perform well and he is pleased with their services. There is no valid reason for considering radical changes if the system has produced that level of acceptable performance as judged by the government official charged with the responsibility to make that judgment.

I appreciate this opportunity to make this presentation today. I would be pleased to submit other information you may need, Mr. Chairman, and I would be happy to respond to your questions.

Thank you very much.

Senator BUMPERS. Mr. Hanson.

STATEMENT OF GARNER B. HANSON, PRESIDENT AND GENERAL MANAGER, NATIONAL PARK CONCESSIONS, INC.

Mr. HANSON. Mr. Chairman, I filed a copy of my statement and hope to make it a part of the record, but it is a short statement and if you will permit me, I will read it.

My name is Garner B. Hanson. I serve as a director and as the treasurer of the Conference of National Park Concessioners. For many years, I have also served as secretary of the organization.

Up until April 1 of this year, as an individual concessioner, I served as the president and general manager of National Park Concessions, Inc., a corporation that was formed in 1941 to operate concession facilities and services in national park areas.

Our corporation currently operates at Mammoth Cave National Park in Kentucky, Isle Royale National Park in Michigan, Big Bend National Park in Texas, Olympic National Park in the State of Washington, and along the Blue Ridge Parkway between Asheville, North Carolina and Roanoke, Virginia.

Mr. Chairman, our company will be celebrating its 50th year of existence next year. I was born and reared in the area that is now Mammoth Cave National Park. My first employment there was in 1942. This was in the summer of 1942, and in the fall I entered college, and then immediately went into military service.

I returned from military service in February of 1946. The day after arriving home I was reemployed by National Park Concessions, Inc. at Mammoth Cave. This employment continued along with my college work at nearby Bowling Green, Kentucky, graduating in 1949. I have been full-time employed by this company since February of 1949. I became its president and general manager in 1958.

Mr. Chairman, our company is a small company and those of us associated with NPCI are very much alarmed at what we see as the elimination of our continued existence as a national park concessioner. Our management personnel are concerned and our employees are concerned. We worked many years building a concerned and dedicated staff who are imbued with the ideals of preservation and conservation, and just as equally imbued with the concept of serving the public, these visitors to our great national parks.

In recent months, there have been put forth proposals to make basic changes in the concession system for our national parks. Those changes, in our opinion, Mr. Chairman, result in a chaotic situation being brought about in our national parks. The park visitors will be the losers. The American public will be the losers.

Statements have been made that there are about 500 concessioners, and this is a far misleading number, since probably less than 100 are really full service concessioners operating in our national park areas. Of the 100 or less, there are still many smaller concessioners. Some of the very fundamental protections needed by the concessioners are set forth in Public Law 89-249, such as possessory interest, the preferential right of contract renewal, the length of contract, the franchise fee and the preferential right for additional services.

Mr. Chairman, those fundamental rights are needed today, tomorrow and in the future just as they were needed when the law was enacted in 1965. The current suggestion by some that these protections are not still needed are not correct.

Mr. Chairman, NPCI entered into a new 20-year contract with the National Park Service on September 8, 1982, and that contract calls for the corporation to expand $2,300,000 in the first phase of an improvement program and $2,018,000 in the second phase of an improvement program, subject to both parties agreeing that the second phase is economically feasible to undertake.

Our corporation could not have undertaken these improvements without the use of borrowed funds. Borrowed funds could not and cannot be obtained by this corporation without having possessory interest, where such interest can be mortgaged. The lending institutions simply have not and will not loan us money without taking a mortgage on our possessory interest.

The preferential right of contract renewal is just as important, and possibly more so today than in other years. There is a two-pronged urgency in this matter. One is the need for the preferential right to encourage concessioners to continue to invest their funds in improvements in the national parks, and the second is to enable concessioners to encourage and secure qualified and dedicated people into our industry. It should be specifically noted that the preference of renewal is conditioned upon satisfactory performance, and acts as an incentive.

Much has been said about the length of contracts necessary to encourage investments and improvements in the national parks to provide for improved visitors services. These long-term contracts are more valid today than ever. The opportunities for investment funds grows each year, and there must be some incentive for putting your money into a national park area where the title immediately vests in the U.S. Government.

There must be sufficient numbers of years involved in borrowing money. Lending institutions want a number of years as a cushion to assure repayment. These institutions are not interested in foreclosing, operating or becoming involved in putting anyone out of business. They are primarily interested in receiving a return on their borrowed funds and to receive repayment of those funds on an orderly and a regularly scheduled basis.

Mr. Chairman, the thrust of the Department of the Interior, it seems, is to extract additional fees from the concessioners. It has been stated that concessioners are not paying a proper fee, and this statement has been generalized as a condemnation upon the entire concessioner-Park Service partnership. National Park Concessions, Inc.'s adjusted gross income was $8,916,365 for the year of 1989. The National Park Service fee is 3.5 percent, or a total of $293,601, which represents 53 percent of the net profits from our park operations.

Mr. Chairman, if we were to raise the fee 3.5 percent to 7 percent based on 1989 figures, which was a good year, National Park Concessions, Inc. would not have enough profits to pay its National Park Service contract fee. It has been suggested that a fee closer to 22 percent be considered for concessioners.

Mr. Chairman, in our case, we would have to borrow more than 15 percent just to pay the fee. I suggest to you that there are a number of other concessioners who are in the same boat that we are in. The magic 22 percent fee seems to have been developed around a fee that is paid by one of the concessioners at Yellowstone National Park, and it is totally unrealistic to apply the same rationale to other concessioners.

Mr. Chairman, the U.S. Government, Department of the Interior, National Park Service, paid in round figures $20 million out of U.S. funds for one of the primary concessioner facilities at Yellowstone. Then, the National Park Service negotiated a contract whereby that concessioner would pay a fee of approximately 22 percent of its gross revenues.

This covered the use of those $20 million of concessioner facilities paid by the Government. It covered the maintenance and repair of those facilities. When a bus wears out, those funds are used to buy a new bus. When a washing machine wears out, those funds are used to buy a new washing machine.

Comparing the arrangements at Yellowstone with most concessioner contracts is simply not proper. Other concessioners have to replace their own equipment, they repair their buildings and their facilities, they build the new facilities, all from their own funds. Simply put, comparing the arrangement at Yellowstone with other concessioners is very wrong.

One of the basic and fundamental tenets in the planning process of the National Park Service is not to encroach upon the natural scene too much so as to damage the resource. It has been a standing policy of the National Park Service ever since I have been associated with that organization that only those facilities necessary, needed and desirable for service to the public were to be permitted and approved in the national parks.

It has long been a policy of the Park Service not to have competing operations and facilities where you would duplicate infrastructure and utilize additional land. It was a concept of the Park Service that one good, strong concessioner, or a very limited number of strong concessioners, would better serve the public interest than many weak or marginal operations, so it has been the policy when additional services are needed to look to the existing concessioner to provide that service. This is a sound policy and should be continued both to reduce the impact upon the resource and to provide for better service to the public.

In summary, Mr. Chairman, the criticisms have been centered upon the well working relationships of the concessioners and the Park Service to serve the visitors to the national parks are misguided. The report of the Inspector General does not state at any point that any concessioner has failed to fulfill the terms of his contract with the National Park Service. The report does not say that the U.S. Government has failed to get what was contractually obligated to be paid to it. The report in my opinion, Mr. Chairman, is a Sunday-quarterbacking look of what could have been had a different set of terms been in place. This could be said about any contract that the Government enters into, or even anyone in the private sector.

The National Park Service Task Force made certain suggestions, yet they admitted that the system has, in fact, worked well in the public's interest. Today, a partnership exists in our national parks, one which encourages the best in service and quality to park visitors while protecting the natural and historic resource.

The changes proposed would result in reduced services, deterioration of visitor facilities and a lessened experience for park visitors. The Park Service and the Department of the Interior on numerous occasions have publicly commented on the success of the private sector Government relationship in providing services to the public in our national parks. The proposed changes in the concessioner system will not be in the public interest. Public Law 89-249 should remain intact. Do not tear down what is working well.

Thank you, Mr. Chairman.

Senator **Bumpers**. Thank you, Mr. Hanson.

Mr. Pritchard.

STATEMENT OF PAUL PRITCHARD, PRESIDENT, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. **Pritchard**. Good morning, Mr. Chairman. Gentlemen, it is a privilege to be here to comment on the specific provisions that have been raised by the two reports of the Department of Interior. That is, the Inspector General's Report and the Task Form on National Park Concessions.

I appear on behalf of the National Parks and Conservation Association. We have worked long and hard to address this issue of what is fair, what is reasonable and what is necessary and what is appropriate, and we would like to make some recommendations. Today, sir, in the interests of time, I would like to submit my testimony for the record and just summarize my comments, if that would be acceptable.

But first, may I say that I was very impressed by Senator Wallop's comments and would want him to know that we again, as we did before, will support this effort to reestablish the visitor facility fund. It was an important program and one which we think showed a great deal of vision, and I think the hearings, Mr. Chairman, that you have brought forward today have raised a lot of questions which will produce other benefits such as this one, I would hope.

Mr. Chairman, there are six points that I would like to refer to so that we might come more specifically to the concerns of today, the first being the issue of franchise fees. Regarding the franchise fees, we totally agree with the Secretary of Interior and the reports that were submitted to him that these fees are not adequate, and low. We have also reviewed two different sources which we thought might benefit your committee. We found in a review of State agencies that also have concessions that the average fee is 9 percent, Mr. Chairman.

Senator **Bumpers**. Is how much?

Mr. **Pritchard**. It is 9 percent, and that varies considerably between States, but 9 percent is the average of 29 States across the country that also have concessions. We also checked with the National Association of Franchisers, a private organization, and found that their average fee—or their usual fee, if there is an average, that the usual fee averages around 5 percent, but that includes normally a very large initial buy-in fee, and so one could argue that this fee is considerably higher.

Mr. Chairman, for these reasons and others, we believe there are serious reasons why you should in fact consider increasing the fees for the concessions. We would recommend that the fees be used for three purposes, at least in this evaluation:

First, certainly, there is a need and can be the maintenance of those moneys going into the general treasury.

Second, and very important to us, is that the moneys go back to the resources, the national parks, those natural and cultural resources that desperately are in need, as other hearings which you have chaired have shown, and we would argue that some of those fees should go back to those battlefields and those natural areas and the interpretation and other issues that have been addressed by this committee.

Finally, we would suggest that some of those funds could be used to repurchase the rights of the concessionaires so that they can be fairly bought out by the Federal Government, and we would refer back to a 1948 statement by Secretary Krug, who made it quite clear in his concerns that at that time in 1948 it was clear to him that Government ownership and private operation—not total Government operation, but the combination of Government ownership and private operation of concessions was what he believed was in the best interest, and we believe that is still the case today.

Mr. Chairman, moving to the second issue of preferential rights, we would fully agree with the 1976 joint committee reports, which stated that the system today of preferential rights effectively, as they stated, is anticompetitive. In fact, it blocks competition, they said, and we believe that is in the concerns that have been expressed by Senators, both Republican and Democrat, that this be a fair and competitive system.

Mr. Chairman, this particular issue of preferential rights, as stated, is reviewed by that committee, and as we found today still is an anticompetitive provision. Therefore, we would agree with the Inspector General's report, and we would suggest to you that as a minimum this should be made discretionary. But then again, we would feel that the best interest would be served by not having this at all.

Regarding possessory interest, Mr. Chairman, we have surveyed a number of States. Just in calling them, we found that 11 States have no possessory interest at all and 3 that do, and we are still doing this survey at this very time and so we will get back to you for your committee's report, Mr. Chairman, so that you will have a full report of all 50 States, but only 3 said they did, and even in those cases there were serious constraints on the issue of possessory interest. Again, the 1976 joint committee referred to this as windfall profit, and we would agree with that.

This issue, we would suggest, is a good example of where the comments of Secretary Krug in 1948 apply, and that is that we should, in fact—the Government, the public, should own these facilities and in that way not have to repurchase those rights when the public finds that the service does not meet the satisfactory levels that they should be meeting.

In the fourth issue of concessions management, we have found the Park Service—as was reported in the report submitted to the Secretary, the Park Service is not able to perform the functions which the Congress wanted it to, and we would encourage you to move forward with at least $1 million to help them in the training and the hiring of consultants and other individuals who can help them carry out this very important function and do it in a way that we know we will be getting the proper service that we need.

But we would also point out that without any incentive—that is, without funds from the concession operations going back to the Park Service, there is clearly a disincentive to the National Park Service to put much emphasis on the role and function and the income generated from the concessions.

On our fifth point, we are very concerned, and one of the most important is the issue of the public's right to know. We have found, and believe, that it is in the public's best interest to know the information that is now the source of great confusion and frustration by the public, and we would suggest that if the pubic did have proper information on annual reports, on profits, on the cost of operations, that many of these issues and the concerns that we have expressed would be addressed and would be resolved before we even came here today.

The problem today, Mr. Chairman, is that much of this information is exclusive and is held to the concessions, the very operations, and therefore it is very much a monopolistic environment, one that is not in the best interests of the public.

Finally, and one of the most important—I know one Mr. Frampton referred to more so, but it is a very important issue that we have not discussed, and that is the issue of necessary and appropriate. As called for in the Concessions Policy Act, the principle of necessary and appropriate is one that is really the basis for our concern here today. Are the facilities necessary to the operations of the park system, and are they appropriately located and accessible to the public?

These two principles have been ones that we believe are being more and more violated, and recent issues such as on the North Rim of the Grand Canyon, the construction of restaurants here at Potowmack Landing and other locations around the country, clearly begs the question that there needs to be a stronger definition of what necessary and appropriate, as established by Congress, does in fact mean.

We would be happy to address this and any questions that you and members of this committee have. We think this issue must be addressed and deal with in a fair and open fashion, and we would encourage you—and the one area that we would suggest that needs to be expanded on is that the Secretary has suggested that he can handle many of these issues by administrative action. We believe that it is rightfully the role and function of this committee and the Congress to take action through legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pritchard follows:]

National Parks
and Conservation Association

Statement of Paul C. Pritchard
President
National Parks and Conservation Association

Presented to the
Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources
U.S. Senate

Oversight Hearing on Concessions Policies of the National Park Service

July 25, 1990

My name is Paul C. Pritchard. I serve as President of the National Parks and Conservation Association (NPCA), a 200,000-member citizen conservation organization founded in 1919 by Stephen Mather, the first Director of the National Park Service, and prominent businessmen and scientists. Through our organization's diverse activities, we seek to promote the preservation, protection and public understanding of our nation's National Park System. We appreciate the opportunity to appear today at these important oversight hearings on concessions policies of the National Park Service.

There is nationwide public interest in concessions issues. In the past several months, I attended meetings in San Francisco, Florida and elsewhere and was repeatedly asked about concessions, especially those at Yosemite National Park. Based on these and other discussions, including those with our board of trustees, as well as the extensive media coverage, I believe that the concessions issue has caught the public's attention to a much greater degree than it has at any other period in recent times.

Secretary Lujan is to be highly commended for his outstanding leadership in addressing concessions issues. The reports that he directed to be prepared have significant findings and recommendations. The steps he is taking, announced at his recent press conference, are very important. We support the actions he is taking and, as discussed below, have suggestions for alternative or additional efforts that should be undertaken.

NPCA held its recent board meeting in mid-May in Hot Springs, Arkansas. Our board, led by several individuals with strong business backgrounds, began discussing concessions issues well before the actual meeting began and quickly decided that we needed to increase our longstanding involvement in these issues. While the board is concerned with several aspects of concessions, inadequate franchise fees is one of the most immediate concerns. The board believes that a confluence of several events has made concessions issues of compelling interest to the public--an interest that will not disappear in the future. NPCA's board has reaffirmed concessions issues as a concern of prime focus to the organization and

1015 Thirty-First Street, N.W., Washington, D.C. 20007-4406
Telephone (202) 944-8530 · Fax (202) 944-8535

PRINTED ON RECYCLED PAPER

its members and has undertaken action to increase our efforts for whatever timeframe necessary to reform the concessions system. The NPCA board has embarked on a sustained quest for new perspectives necessary in order to contribute to the restructuring.

Looking at the National Park System as a whole, there are a wide variety of concessioners and services provided by these concessions. Over the years, we have worked with concessioners on a variety of issues. While we have the utmost respect for the vast majority of the individuals with whom we have worked, we also believe that substantial changes must be made in park concessions.

The Inspector General's report and the Report of the Task Force on National Park Service Concessions include a large number of extremely important findings and recommendations. It is interesting that many of the points made in these reports are similar or identical to those made in previous reports as early as the mid-1970s. It has been clear to a number of individuals and organizations for several years that fundamental improvements are needed in National Park Service concessions.

Before discussing some of our previous involvement and the most pressing issues today, I would like to briefly examine some significant general considerations. One of these is basically ethical in nature. Are the concessioners paying a fair return to the American people for the privilege of doing business in our national parks? A second related concern is fiscal. Are the concessioners paying adequate fees to the the federal government especially given the near monopolistic atmosphere in which they operate? The third issue concerns actual management and oversight of concession operations. Does the National Park Service have sufficient and adequately trained staff to deal with concessions issues? The final issue has to do with park policy. Are the concessions being operated consistent with existing policy and should the policy be improved? We believe that these larger questions should be foremost in our minds as we examine some of the more detailed concessions issues.

NPCA's recent concern dates back to the early 1970s when we saw the increasing influence wielded by concessioners and the inadequate service that too many park visitors were receiving. As part of our efforts, we went to court in an unsuccessful attempt to have greater public disclosure of concessioner financial data. At that time, there was increasing interest in Congress in the concessions issue and we testified before various committees examining the situation. As we discuss in greater detail below, the hearings resulted in some extremely serious criticism of park concessions and National Park Service concessions management.

FRANCHISE FEES

A major thrust of the Inspector General's report has to do with the extremely low franchise fees paid by certain concessioners. The most frequently cited number is the three-quarters of one percent of gross receipts paid by the Yosemite Park and Curry Company. Other major concessioners pay between one and four percent. According to press reports, the average franchise fee paid by park concessioners is about 2.5%. We believe that much larger fees should be paid. In the past few months, we surveyed about half of the state park systems and found that they generally receive about nine percent. This certainly seems like a much more equitable fee. We believe that Congress should request a study by the General Accounting Office to determine the appropriate levels for franchise fees for park concessions.

While a higher fee is in the best interests of the government, it does not benefit the National Park Service since the fees go to the general treasury. We believe that it is extremely important that the National Park System benefit directly from the franchise fee revenue and recommend that Congress enact legislation ensuring that the fees return to the National Park System to help protect the natural, cultural and recreational resources that the visitors come to enjoy. According to the Inspector General's report, the concessioners' gross receipts are approximately $500 million. If they paid a 10% franchise fee that was retained by the National Park Service, the Service would receive an additional $50 million annually to deal with a variety of problems facing the parks.

PREFERENTIAL RIGHTS

There are other significant concessions issues beyond franchise fees. One of these is the preferential right to renewal. The Concessions Policy Act directs the Secretary to ". . . encourage continuity of operation and facilities by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary." A 1976 Joint Report by the Committee on Government Operations and the Committee on Small Business (House Rpt. 94-869) concluded that: "This provision has effectively blocked competition and assured that a concessioner can continue in a park indefinitely." Similar sentiments were expressed by the General Accounting Office in its 1980 report, Better Management of National Park Concessions Can Improve Services Provided to the Public. That report states in part: "As it did in 1975, GAO recommends that the Congress amend the Concessions Policy Act to eliminate the right of preference for contract renewal. Preferential rights of first refusal to provide new or additional services also should be eliminated. GAO believes existing concessioners already have a competitive advantage over others who want to operate in the parks--they do not need additional legal advantages."

The Inspector General's report recommends that the Director of the National Park Service "seek legislative changes in the Concessions Policy Act of 1965 to eliminate existing concessioners' preference in contract renewals." The Task Force on National Park Service Concessions notes that since 1965 ". . . there have been only a handful of instances, out of thousands of permit and contract renewals which have occurred, where an existing satisfactory concessioner who sought renewal was replaced by a successor." The Task Force also states: "Clearly, the preference in renewal is inherently anti-competitive." It recommends that the National Park Service develop a legislative proposal to make the existing statutory preferential right discretionary.

Certainly, we agree that the Concessions Policy Act needs to be amended to change the existing preferential right language. At a minimum, Congress should make the preferential right discretionary, but it should also consider whether it would be preferable to allow for no preferential rights. It is possible that if the National Park Service is given the discretion to give preferential rights that a large number of the contracts will have that provision and we will face the same problems in the future that we do today. If Congress decides that there should be a discretionary right to renewal, clear guidance should be given to the National Park Service in legislative or report language concerning the criteria to be used in granting this right.

POSSESSORY INTEREST

Another serious concessions issue is possessory interest. The Concessions Policy Act provides that a concessioner ". . . shall have a possessory interest . . ." in structures, fixtures, or improvements that the concessioners acquires or constructs. The concessioner does not actually hold title to the facilities. According to the law, the Service is required to pay an amount equal to reconstruction costs less depreciation if it wants to terminate the concession operation unless the agreement with the concessioner provides otherwise. This provision has been controversial. For example, the 1976 Joint Report referred to earlier also states that: "These possessory interests allow the concessioner to demand compensation on the basis of reproduction value if the concessions contract is terminated or is not renewed for any reason. This compensable possessory interest can result in a windfall profit to the concessioner, and, in fact, severely discourages the NPS from terminating a concession operation or receiving bids from a possible competitor when the existing contract is being considered for renewal." In 1980, the General Accounting Office concluded: "As it did in the 1975 report, GAO recommends that the Congress finance future construction of Park Service concession facilities whenever possible to avoid problems caused by possessory interest." The potential problems with possessory interest or a similar concept were understood years before. In 1948, a concessions advisory group appointed by Secretary of the Interior Krug stated that: "Government ownership but not operation of basic facilities is in the long run in the public interest."

It is extremely difficult for the National Park Service to terminate a concession operation that has large possessory interest. It was done for approximately $20 million at Yellowstone National Park in the late 1970s. That experience led to inclusion of language in appropriations legislation each year that states that the NPS future concession contracts, including renewals, have to ". . . include a termination for cause clause that provides for possible extinguishment of possessory interest excluding depreciated book value on the concession investments without compensation." In a case where a concessioner has been performing unsatisfactorily, this would allow the NPS to pay depreciated book value for a concession operation.

While this appropriations language is helpful in the case of an unsatisfactory concessioner, it does not address the larger possessory interest issue. One way in which this might be approached would be to allow the NPS to use concession franchise fees to compensate concessioners for possessory interest. Perhaps only a portion of the franchise fees would be used in any one year. Over several years, substantial progress could be made. An approach similar to this was embodied in the Visitor Facility Fund which Congress established in 1982 but never reached its full potential before its authorization expired in 1989.

CONCESSIONS MANAGEMENT

Since the time that Congress held hearings in the mid-1970s, the National Park Service has improved its management of concessions. The staff is larger, better trained, and generally more qualified. Nevertheless, there still is concern about the Service's ability to manage concessions effectively. The Task Force on National Park Service Concessions states: "Park Service employees at the park and regional levels face many conflicting pressures that make it difficult for them to take a forceful business approach in representing the Government's interests in negotiations with concessioners." It concludes: "Finally, there has been little or no formal training of park employees in negotiating and contracting skills, nor has the Park Service made use of professional negotiators in dealings with concessioners." With regard to franchise fees, the Inspector General notes: "The regional and park personnel responsible for determining and negotiating franchise fees did not have sufficient educational backgrounds to adequately perform the financial analyses."

At times, the concessions staff can be undercut by individuals higher up in the Department. For example, in a 1981 speech before the Conference of National Park Concessioners, then Secretary Watt stated: "If a personality [within the NPS] is giving you a problem, we're going to get rid of the problem or the personality, whichever is faster." This contrasts markedly with the principles endorsed by Secretary Lujan. He stated last Thursday that his concessions policy would be based on five principles starting with the protection of ". . . park natural and historic resources, above all other goals . . . ." National Park Service concession management employees now have a Secretary who will support their efforts to improve the concessions system.

The Inspector General's report recommends that a training and/or recruitment program be established ". . . to enhance the financial analyses capabilities of Park Service concession personnel." The Task Force on National Park Service Concessions has similar and more extensive recommendations. We recommend that Congress appropriate additional funding, perhaps as much as $1 million for FY 1991, to begin to make the improvements called for in these reports.

PUBLIC INFORMATION

Another essential improvement would be for the public to have greater information about concession operations. More has been published about franchise fees in the past few months than probably has been published in the preceding five or ten years. This is a healthy result of the Secretary's interest in concessions. While certain information may have to be limited, we concur with a conclusion in a 1985 report, National Parks for a New

Generation, prepared by the Conservation Foundation: "Disclosure would permit more effective public scrutiny of the rates set and activities permitted by the park service as well as reduce opportunities for favoritism in establishing and administering contracts. It would also enlarge the opportunity for informed dialogue between concessioners and other park interests, with less of the stridency that must be expected when the facts are kept secret."

NECESSARY AND APPROPRIATE FACILITIES

Our final issue is the important sentiment of Congress as expressed in the first paragraph of the Concessions Policy Act. Congress reaffirmed its direction that park resources should be left ". . . unimpaired for the enjoyment of future generations. . . ." Congress further stated that concession facilities should be ". . . limited to locations where the least damage to park values will be caused." Finally, Congress stated: "It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas." There are at least two very important ideas included in these directions from Congress. One is that concessions must be necessary and appropriate and the other is that they be located with the best interests of the resource in mind.

Over the years, questions have been raised about concession facilities in several parks with regard to their necessity, appropriateness and location. Similar questions have also been asked about National Park Service facilities. Perhaps these types of concerns are best illustrated at Yosemite National Park. Over the 100 year history of Yosemite National Park, extensive development has occurred in the most sensitive and beautiful portion of the park, the Yosemite Valley itself.

After two years of analysis and extensive public involvement, the Yosemite General Management Plan (GMP) was adopted in 1980. The plan called for a series of measures to ease human pressures on the park, particularly in Yosemite Valley. Key elements of this visionary plan included a 17 percent reduction in overnight accommodations in the valley, the relocation of both National Park Service and Yosemite Park and Curry Company employee housing and other "nonessential" facilities from the valley, and a traffic reduction scheme leading to the eventual phase-out of the automobile in the valley.

Unfortunately, insufficient progress has been made in meeting the goals of the plan, goals that NPCA still strongly supports. It is certainly true that sufficient funds have not been available for the National Park Service to carry out many important actions outlined in the GMP. However, most expenditures on plan implementation have been for infrastructure improvements that have served to further institutionalize an operational presence on the part of the NPS and the concessioner in Yosemite Valley, not to advance the goals of the 1980 Plan.

In January 1990, NPCA and four other conservation organizations, representing a combined total of 1.5 million members, submitted comments on the National Park Service's

Draft General Management Examination Report, another planning exercise to reexamine the 1980 GMP. In those comments, for example, we restated our strong conviction that consistent with the 1980 Plan, the NPS should require a reduction in accommodations of at least 289 units in Yosemite Valley. This number represents the 268 units identified for removal in 1980, together with the 21 additional units constructed since then. The major concern, of course, is that substantial progress needs to be made quickly in implementing the plan so that the facilities remaining are more in line with what is necessary and appropriate.

Ironically, the Yosemite Park and Curry Company is a progressive and conservation-minded concessioner. The problems identified above are, we believe, due to a variety of factors including lack of total commitment to implementing the plan, lack of adequate funds, the lack of clear policy, and a National Park Service suffering from the effect of differing Administrations as evidenced by the contrast in the approach to concessions between Secretary Watt and Secretary Lujan.

Another example is the Potowmack Landing restaurant, the presence of which NPCA and others challenged in court. This restaurant is located on Daingerfield Island along the George Washington Memorial Parkway. This restaurant replaced a modest clubhouse cafe used primarily by visitors at the sailing marina and those using the athletic fields and bike path. The restaurant and related facilities are three times the size of the previous facility which was intended to serve those using the park. Now, there is an upscale facility which does not serve the needs of the vast majority of sailors, bikers and soccer players using the park. The restaurant is an attraction itself for those wishing that type of dining facility. There are many similar types of establishments in Alexandria and the District of Columbia. The Potowmack Landing restaurant fails to meet the criteria for necessary and appropriate.

Last summer, construction was about to begin to alter and expand the concession facilities on the North Rim of the Grand Canyon. The Sierra Club, represented by the Sierra Club Legal Defense Fund, went to court and successfully stopped the construction on the grounds that the National Park Service had not adhered to the requirements of the National Environmental Policy Act (NEPA) in approving the construction. Inherent in the plaintiff's case is the argument that the changes being proposed are neither necessary nor appropriate to the North Rim where the intent is to provide the visitor with a much less crowded experience than can be obtained on the South Rim. The National Park Service is currently in the process of complying with NEPA.

These examples raise serious issues with respect to necessity and appropriateness of concession facilities. They raise particular concern with respect to the upgrading of existing concessions. As more facilities reach their useful life and as the National Park Service reexamines existing General Management Plans, much greater attention needs to be given and progress made in reducing the negative effect of facilities on park resources. More consideration needs to be given to moving facilities off the prime resource and locating them more toward the boundary of the park or on private land outside a park. Cooperative planning with adjacent communities can help benefit the community, its tax base, the park and the visitor. As initial General Management Plans are prepared for new parks, NPS personnel need to keep in mind the mistakes made in the past and ensure that facilities are necessary and appropriate as called for in the law. When they are found to be necessary and appropriate, they must be located to help preserve and conserve park resources.

While the concept of necessary and appropriate has some historical meaning, we believe that we also need to look at it in terms of the overall impact of concession operations on the environment. Recently instituted programs to encourage recycling and alternatives to nonbiodegradable products are positive examples of some of the steps that all concessioners can take to reduce the impacts of their operations on the environment, to educate visitors, and to set an example for the country at large. Yosemite Park and Curry Company and Secretary Lujan have shown leadership in these programs. The parks can be the place where we demonstrate just how quickly progress can and should be made.

As I mentioned at the outset, Mr. Chairman, there is a great deal of public interest in concessions. We believe that it is in everyone's interest to resolve the variety of issues related to park concessions. Earlier, I raised several over-riding issues and concerns. We believe that substantial improvement should and can be made in all of these areas with the support and involvement of Congress and the Administration. The result of the improvements will ensure that the parks are better protected, the visitor is better served, and the National Park Service will have added resources to carry out its important mission.

That concludes my testimony, Mr. Chairman. I would be happy to answer any questions you or the other members of the Subcommittee may have.

Senator **Bumpers**. Mr. Frampton.

STATEMENT OF GEORGE T. FRAMPTON, JR., PRESIDENT, THE WILDERNESS SOCIETY

Mr. **Frampton**. Thank you. I am George Frampton, president of The Wilderness Society, and I appreciate the opportunity to appear here on behalf of the society's nearly 400,000 members.

I want to commend the Secretary—Secretary Lujan and Director Ridenour. I think they deserve a lot of credit for taking an interest in park concession policy and a leadership role on this issue, and I think the policy changes that the Secretary announced 2 weeks ago over time will take us in the right direction.

But we are very concerned that this new, high-level interest on the part of the administration seems to be generated primarily—not entirely, but primarily—by the ridiculously low franchise fees that are being paid, the lack of any competition, and the need to get some more money for maintenance in the parks, because if all we do in the next year is increase the fees and introduce a little bit of competition for competition's sake, we are not really going to get at the underlying problems, problems which have been well documented.

I was skimming last week through the transcript of a hearing, Mr. Chairman, that you held in 1979 on these same issues. I would suggest that the real underlying problems are two. First of all, the intent of the Concessions Policy Act is not being realized.

The intent of that act is very clear. "Park developments should be limited to those that are necessary and appropriate for public use and enjoyment. They must be consistent to the highest practical degree with the preservation and conservation of natural areas.

"Public accommodations as have to be provided should be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair natural values, and development of facilities should be limited to locations where the least damage to park values will be caused."

That simply is not happening. The existing system provides significant incentives for continued development and overdevelopment of many parks where that should be occurring, and I must say that I think The Wilderness Society finds itself in total agreement with Senator Wallop's observation earlier that the Park Service should not be in the business of competing with the private sector, nor should the Park Service be in a position where it joins in a monopoly partnership with the private sector, using the parks to compete against the private sector.

We think that some of the development that currently exists in the parks, and to the extent feasible, new development, should be located outside the parks and should be build and operated by the private sector and not in a joint monopoly arrangement inside the park with the Park Service.

The second fundamental, underlying problem with the current system as we see it is that too often it gives the concessioner what amounts to a hammer lock on the Park Service itself, preventing the Service from implementing resource protection plans that the Service develops for the long-range protection of park resources.

Yosemite is an obvious example of that. In 1980 the Park Service, after many years and an enormous amount of citizen input, developed a very far-reaching general management plan. Almost none of that plan has been implemented.

That plan called, for example, for a 17 percent reduction in lodging units in the Yosemite Valley, and for the concessioner to move its administrative headquarters out of the park. Has that been done? No. Why not? Because Yosemite Park and Curry Company has a 30-year contract that basically put the Park Service in a position where it could not insist that those things happen, so it has not happened. In fact, lodging units have gone up over the last 10 years.

The plan called for reducing automobile traffic in the valley. We desperately need additional shuttle bus service. Has that happened? No. Why not? Well, there is no money for it. Well, could you increase franchise fees and get some money that way? No, you cannot, because the money goes back to the general treasury.

Well, if the money could go to the park, could the Park Service try to negotiate with the concessioner that instead of increased franchise fees the concession would put some capital development money into a shuttle system? No. Cannot do that because the contract has a mutuality agreement.

The Park Service cannot raise franchise fees. The company must agree, and basically for the last 20 years the company has refused to any increase in the franchise fee and any real significant additional capital investment over the .75 percent that it pays.

The 1980 plan contemplates reduced development and commercialization in the park. Has that happened? No, it has not happened, and I have appended to my testimony a list of all the new profit centers that the concessioner has introduced since 1980.

What about making changes? What about introducing some competition, somebody who would get in there and try to be more responsive to the Park Service's plan? Well, you cannot do that because when the contract comes up for a change the concessioner has enormous possessory interest and any competitor would have to buy out that possessory interest.

Is that possessory interest the amount of money that the concessioner has invested and that it should be entitled to get back? No, it is not. It is not money that the concessioner has invested.

Most of it represents basically monopoly value that has built up over time, appreciation due to the monopoly position that the Park Service has put the concessioner in. Monopoly value that basically belongs to the people of the United States, but under the current system—possessory interest system, current law—belongs to the concessioner. Mr. Chairman, these are the reasons why we believe that some fundamental legislative changes are required.

Last week, you quoted Yogi Bera. Yogi Bera also said, "when you get to the crossroads, take it."

[Laughter]

Mr. **Frampton**. We think we are at the crossroads. As you pointed out, this is the first time in 15 years that the administration has supported meaningful reform in a system that clearly needs reform, and we would urge you and other members of the committee to look at some very fundamental legislative amendments to the act.

In my testimony that I would like to have made part of the record today, I outline a template for the kinds of changes that we think may be necessary and appropriate, going beyond what the Secretary himself has proposed in the areas of franchise fees, right of preference, possessory interest, preferential right for new services, and the requirements that apply to the bidding document that the Park Service puts out when it advertises a new contract.

I would like to conclude by touching on that last subject for a minute, because that is a very important part of legislative reform if the committee is interested in introducing increased competition into this system.

It is no secret that The Wilderness Society and others have been looking very seriously at the possibility of forming a nonprofit corporation that would bid against the Curry Company for a new contract—concession contract—in Yosemite.

In doing at that, we have learned a great deal about some of the real business problems that face someone who wants to compete with an existing concession, and chief among those problems is the fact that the system for letting a request for proposal—in the law and regulations it is called a fact sheet.

A document that the Park Service puts out to invite a new contract—that system almost denies the possibility of competition, and it is very important to take a look at that document and what ought to be required in that document. For example, in the case of Yosemite National Park, if a competitor bid against the Curry Company, either a for-profit or a not-for-profit company, and won the new contract, the competitor would have to buy out the Curry Company's possessory interest.

How do you mount an effort to bid against an existing concessioner if you have no idea what the value of that buy-out is going to be? Unless the Park Service stipulates in the request for proposal what the buy-out of the existing concessioner is going to cost a successful competitor, it is virtually impossible to obtain financing and do business planning to even submit a bid in the first place.

The Secretary's task force clearly calls for all future RFPs or fact sheets on new concession contracts to include that number. The Park Service's estimate of what the number is going to be for a competitor to buy out the existing concessioner. But the law currently, while it clearly permits the Park Service to do that, does not require the Park Service to do that.

Any RFP for a significant contract that does not contain a number for the buy-out price in our view probably defeats any effective competition by any competitor, a nonprofit or for-profit competitor, to try to compete against the existing concessioner for that contract.

That is an example of kind of a rather technical thing, but it is an issue which needs legislative attention, we believe, and which is absolutely key to introducing any significant competition in to the current system.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Frampton follows:]

THE WILDERNESS SOCIETY

STATEMENT OF GEORGE T. FRAMPTON, JR., BEFORE THE UNITED STATES SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, OVERSIGHT HEARING ON CONCESSIONS IN THE NATIONAL PARKS, JULY 25, 1990.

Mr. Chairman and distinguished members of the Committee, my name is George T. Frampton, Jr., and I serve as President of The Wilderness Society. On behalf of The Wilderness Society's 380,000 members, I am pleased to have this opportunity to address the important issue of national park concessions policy reform.

The Wilderness Society has long been interested in the questions before the Committee today. In our view, these questions have not changed much over the years. In preparation for this hearing we reviewed documents going back nearly two decades, including the House Government Operations Committee Report of 1976, the record of hearings held by this committee in 1979, various private reviews of the concessions program, and of course the recent Inspector General and Concessions Task Force Reports. They tell a familiar tale. Indeed, on the subject of concessions reform, the public record is beginning to sound like a broken record. The system allows too little competition, too little fee revenue, too much concessioner influence over park management, and damage to national park resources and values. In our view, the burden of proof rests squarely on those who would resist reform.

Concern over development and commercialism in the parks has increased of late, but it is not an entirely new phenomenon. In a 1936 issue of the Saturday Evening Post, Albert W. Atwood condemned what he termed "the excessive danger of cleaning up, after the manner of city parks; of smoothing, rounding straightening, manicuring, landscaping . . . At Grand Canyon," he explained, "roadsides have been graded and the natural growth cut away; walks have been laid out -- all with the effect of introducing an element of the artificial, of the smooth and conventional, into what is perhaps, the supreme primeval landscape of the entire world." In his view Yosemite was the worst example, with "its dance halls, movies, bear pit shows, studios, baseball, golf, swimming pools, wienie roasts, marshmallow roasts and barbeques -- all well-advertized in bulletins and printed guides." In his view, it was not that these activities were inherently bad, simply that they had no "relation whatever to the purpose for which the national parks were established."

900 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006-2596
(202) 833-2300

Printed on recycled paper

Much has changed since passage of the Concessions Policy Act (PL 89-249) twenty-five years ago. Acreage in the National Park System has increased three-fold, the number of areas has increased by 35 percent including many new categories of areas, and importantly, the number of park visitors has tripled. The character of that visitation has changed as well, including a greater percentage of day-users finding accommodations outside the parks, and greater visitor use in the shoulder or off-seasons. Local economies have awakened to the benefits of tourism, and gateway communities have responded with more quality services for park visitors. As a consequence, concessioners and the services they provide in the heart of our parks, have become less necessary and appropriate. The times have changed, but concessions law and policy have not.

Mr. Chairman, we would like to commend Secretary Lujan for recognizing there are problems with the concessions program, and for initiating the work of the Inspector General and the Concessions Task Force. The policy changes he announced last week would, over time, improve the program. However, we are concerned by the fact that this recent high-level attention to the concessions issue has been driven primarily by concern over ridiculously low franchise fees, not by a recognition that the existing concession program ties the hands of park managers, damages park resources, and impairs park values. We believe it will be essential for the Congress to set this debate in the proper context. Real reform will require a fundamental rewrite of the Concessions Policy Act.

The National Park Service Act of 1916 (NPS Organic Act) serves as the foundation for all National Park Service policy. The Organic Act establishes a very high standard of protection and applies that high standard consistently across the entire National Park System and across all National Park Service Programs. The business interests of the concessioner must always and forever be subservient to the resource interests of the National Park Service. Indeed, the Concessions Policy Act itself, in Section 1, restates the requirements of the NPS Organic Act to conserve park resources unimpaired for the enjoyment of future generations. It goes on to say:

> . . . public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused.
>
> . . . It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas. (emphasis added)

Yet, despite this apparently strong language in the Concession Policy Act, concessioner accommodations, facilities and services often do not meet these standards. And, when the National Park Service attempts to force compliance with these standards, they are rarely successful. This is why the concession system is broken, and why it must be fixed. A brief example will serve to illustrate.

Ten years ago, the National Park Service adopted a General Management Plan for Yosemite National Park. That action culminated a planning process spanning many years and involved an unprecedented public participation process. It is a plan that acknowledges changes are needed at Yosemite; that Yosemite Valley has become over-developed, over-paved and over-used; and that certain concessioner functions are not necessary and appropriate. Therefore, the plan acknowledges that compliance with the Service's fundamental obligations to future generations means it is time to begin moving development out of Yosemite Valley. Among others, the plan calls for the following changes in concessioner operations:

1. Remove car rental and garage. Status: not accomplished.
2. Remove service station. Status: Converted to photo processing center.
3. Remove Degnan's restaurants and gift sales. Status: not accomplished.
4. Relocate concessioner headquarters. Status: not accomplished.
5. Relocate non-essential concessioner employees. Status: not accomplished.
6. Remove the Ahwahnee Row (executive) houses. Status: not accomplished.
7. Remove 52 cabins with bath, 33 without. Status: not accomplished.
8. Remove Pine Cottage (32 units). Status: not accomplished.
9. Remove 48 concessioner employee tent cabins. Status: not accomplished.
10. Remove 83 tent cabins from rockfall zone. Status: not accomplished.
11. Remove permanent ice rink. Status: not accomplished.
12. Remove parking at ice rink. Status: not accomplished.
13. Remove Ahwahnee tennis courts. Status: not accomplished.

In all, the Yosemite GMP calls for a reduction of 268 overnight visitor accommodations inside Yosemite Valley, out of a total of 1528. Since 1980, however, the actual number of accommodations inside Yosemite Valley has increased by 21 units. Unfortunately, this is but one example of a larger problem. Attached to this statement is a listing of new and expanded Yosemite concessioner profit centers established since 1980, but not specifically authorized by the General Management Plan.

The concessioner at Yosemite is the Music Corporation of America (MCA), doing business in the name of its subsidiary, the Yosemite Park and Curry Company. And, thanks to a favorable contract, they do a very good business. Published reports indicate that MCA had 1989 gross sales of $84.7 million in Yosemite while paying just $635,772 in franchise fees (.75 %) to the federal government. The question becomes: why does the United States allow a large private corporation to operate as a monopoly enterprise, inside a premier national park with a guaranteed and expanding market, to reap huge profits while thwarting attempts by the National Park Service to implement plans to protect and restore park values? The answer: because MCA has a legal contract with a bias in favor of the concessioner, a contract which predates, but tracks in nearly every respect, the specifics of the Concessions Policy Act.

Mr. Chairman, we believe the Concessions Policy Act is internally inconsistent. While the Act lays out good standards in Section 1, standards rooted in the 1916 Organic Act; subsequent Sections render that language meaningless and the Park Service impotent to force compliance with them. Reform, therefore, must be aimed at rearming the NPS, at making the specifics consistent with broad policy, at assuring that only those concessioner functions that are truly necessary and appropriate are developed or retained in the national parks. The Act should be rewritten to reflect a bias against development and commercialism inside our parks, not in favor of it. The burden of proof must be shifted away from those who would question concessioner functions, to those who would seek to encourage them. Some of the policy changes Secretary Lujan has proposed will move us in that direction. But they do not go far enough. Below we describe our views on the key issues.

Franchise Fees

The Secretary has proposed a substantial increase in franchise fees ". . . consistent with the current NPS concessions methodology." Importantly, the I.G. found serious deficiencies in current NPS methodology. Specifically, the Inspector General's report describes deficiencies in the financial analyses performed by the NPS in determining fees, and questions the practice of allowing exclusions from gross receipts, and the practice of negotiating for capital improvements in-lieu of fees. We understand the National Park Service plans to revise its methodology. The Secretary ought to lend his support to that effort.

In addition, it is our view that the law should be changed to direct that franchise fee revenue be deposited into a service-wide account. Continuing to allow individual parks to retain franchise fees for particular capital projects, or to accept construction and maintenance in-lieu of fees, will perpetuate the tendency for "gold-plating" at particular parks, while those parks with less-profitable concession operations go wanting. The service-wide account, augmented as necessary with appropriated funds, should be allocated as follows: 1) A portion should be made available for purchase of possessory interests now on the books, 2) a portion should be used to establish a maintenance account for government-owned structures occupied by concessioner functions, and 3) a portion should be used to provide for the enjoyment of park visitors through improved and expanded NPS interpretive programs.

The Concessions Task Force recognized that capturing higher levels of compensation in the form of fees may require an increase in appropriated funds to finance projects and tasks previously financed by the concessioner in-lieu of fees. Specifically, the Task Force recommended consideration of ". . . changes in the Congressional and executive branch funding mechanisms to meet park maintenance and other basic needs." Secretary Lujan has not directly acknowledged the likely need for additional appropriated funds, but he has asked his legislative office to investigate potential legislation for "visitor facility funding." It is our hope such a fund would encompass more than simple building maintenance, and that recognition will be given that augmentation with appropriated funds may be necessary as the Task Force has suggested.

Right of Preference

The right of preference in contract renewals should be abolished. A satisfactorily operating incumbent, who is responsive to the NPS Statement of Requirements (fact sheet), needs no further preference in the contracting process. To grant such additional protection renders the word "competition" inapplicable. In the words of the Concessions Task Force:

> ". . . the disadvantages are two-fold. First, the existence of the preference severely limits NPS influence in dealing with concessioners ... Second, the preference limits the opportunity for all Americans to compete for government contracts. This disadvantage is exemplified by the fact that out of 187 current concession contracts, only one is presently owned by a member of a minority group . . . Clearly, the preference in renewal is inherently anti-competitive."

The Task Force goes on to recommend a legislative change to render the right of preference discretionary, rather than mandatory. This recommendation echoes that contained in the draft report of a 1988 Park Service Concessions Funding Task Force:

> " In the (Park) Service's dealings with its concessioners, the concept of 'preference in renewal' . . . tends to restrict the Service's ability to require change . . . We think that many businesses that would otherwise make offers and help keep our services vital and full of new ideas are not willing to invest the time in doing so. The (Park) Service could expect more effort, more imagination, and more willingness to make financial arrangements to the best advantage of visitors and the government if the disincentive of preference in renewal were removed from the law or limited as to duration."

The Inspector General reviewed this question in some detail and came to the final conclusion that ". . . there is significant interest in operating Park Service concessions but that a competitive environment cannot exist until the preference clause is eliminated in contract renewals . . ."

Unfortunately, Secretary Lujan has embraced none of these recommendations, choosing only to suggest that "Preference rights will be redefined to the extent allowed under existing law to enhance competition in contract renewals." His limited recommendation, that right of preference will be conditioned on a bidder submitting a responsive proposal, is not consistent with the recommendations of the Inspector General or of the Task Force, and will do little to resolve the key problems. We encourage the Secretary to take another careful look at the record. When he does, we believe the weight of the evidence will support eliminating the right of preference in contract renewals.

Preferential Right: New Services

Secretary Lujan has suggested that the preferential right to provide new services shall be limited only to those instances when compelling circumstances indicate it would be in the public interest, and that any granting of such a preference must be approved by the Director. We concur in that recommendation.

Possessory Interest

Possessory Interest, the right to compensation for real property improvements by the concessioner, creates an impediment to competition and serves to institutionalize incumbent contractors. The problem is exacerbated by the common practice of providing for "sound value" compensation in contracts, rather than a more sensible "book value" calculation. Sound value is generally defined as current reproduction cost less physical depreciation, while book value is defined as the initial capital investment less depreciation taken as a business expense. The problem has also been compounded by the practice of allowing concessioners to make property improvements in-lieu of fees, thereby converting the payment of a fee to the United States into an appreciable asset to which the concessioner is entitled "sound value" compensation in the event of contract termination or buy-out. It has been a sweet deal for the concessioners, but bad for the United States and prospective competitors in contract renewal.

At Yosemite, for example, MCA has acquired and assembled a substantial possessory interest, which limits the ability of the National Park Service to require change. It also places a sizeable financial burden on those who would consider competing for the MCA contract when it come up for renewal in the next few years.

Secretary Lujan has adopted the recommendations of his Task Force stating that,

> "Improvements paid for by concessioners in exchange for direct franchise fee reductions should not create possessory interest. Future concessions contracts should provide for book value compensation for new improvements and should provide that this value may not be increased when the contract is transferred."

This policy is certainly an improvement over the status quo. But it does not go far enough.

In our view, no new possessory interests should be granted concessioners, and existing possessory interests should be bought out with franchise fee revenue or appropriated funds, or obtained over time through contractual agreements. As the Concessions Task Force suggested, the practice of granting possessory interest is not financially warranted as a necessary means to attract capital in all circumstances. And, in our view, in those instances where the United States wants a facility built, it is better for the Congress to appropriate funds for that purpose than to continue granting compensable property interests to private parties within the national parks.

Statement of Requirements

In recent months, The Wilderness Society has been investigating the conditions under which a competitive bid for the Yosemite concession contract might be submitted to the National Park Service. This investigation has revealed the fundamental importance of the Statement of Requirements or "Fact Sheet." The Fact Sheet describes the minimum requirements for a contract proposal and lays out the conditions under which a contract bid will be evaluated. This important document is developed without opportunity for public participation or review, and the content of Fact Sheets has been roundly criticized. Two primary faults have been found: 1) they lack specific plan implementation and rigorous resource protection requirements, and 2) they lack adequate financial information.

The first problem is based on the fact that contract proposals will normally respond to, but go no further than whatever the Fact Sheet requires. As a consequence, it is important that the National Park Service include specific requirements for implementation of management plans, together with other requirements to advance resource protection goals. In the Yosemite example, where a Fact Sheet is now under development, it will be essential that the Fact Sheet describe specific actions the concessioner must take to comply with provisions of the Yosemite General Management Plan. If the Fact Sheet does not include such requirements, the proposal will not, and the Park Service will be no closer to implementing the GMP.

The second issue, financial disclosure, was examined both by the Inspector General and by the Concessions Task Force. Both made very specific recommendations. Secretary Lujan has thus far ignored them. The Inspector General reported that:

> ". . . the fact sheets did not contain annual receipts of a particular operation as audited, the amount of investment required for the purchase of an existing concessioners assets, relative profitability of an operation, working capital requirements, or market research data. Yet the offerers needed this information to address the factors used by park Service to evaluate the proposal for the concession contract . . . Without the full disclosure of specific financial data and submission requirements, interested parties are not able to submit competitive proposals which meet the type, quantity and quality of services and accommodations required by a park."

If the Congress is serious about providing real opportunities for competition in the concessions contracting process, action must be taken to require disclosure of financial information adequate to allow a prospective competitor to mount a viable contract bid. Without such information, no competition will be possible at Yosemite, or elsewhere.

Mr. Chairman, we appreciate this opportunity to review our thoughts on the concessions question, together with the recent Departmental reports and Secretarial initiative. Generally, we believe the relative benefits of concession reform will be a direct function of the thoroughness with which reform is accomplished. The Secretary has taken a first step, now Congress must direct that the balance of the job be done.

As this process continues, it is our hope that the debate will recognize two things. First, that the primary motivation for the effort is to assure that resource preservation goals remain primary in all NPS policy and programs. And, second, that the present Concessions Policy Act includes many provisions which conflict with that aim. In many ways, the whole issue can be condensed to the words "necessary and appropriate." If the National Park Service were to interpret the meaning of those words with a rigorous application of Organic Act principles, as embodied in Section 1 of the Concessions Act, most of the concessions problem would go away, indeed, many of the concessions would go away. Perhaps it is time for the Congress to provide the Park Service with a little guidance.

Thank you.

ATTACHMENT 1

NEW YOSEMITE CONCESSIONER PROFIT CENTERS ESTABLISHED SINCE 1980, NOT IDENTIFIED IN THE GENERAL MANAGEMENT PLAN

1. Camp Curry pizza and ice cream stand.
2. Raft rental.
3. Wine tasting, gourmet, and music festivals.
4. Photo finishing center.
5. Video Rental.
6. Tobacco shop.
7. Camp store at the ice rink.
8. Lunch service at the Wawona golf pro shop.
9. Tour sales outlet at Village Store.
10. Fudge counter at Village Store.
11. Wawona Hotel Saturday evening barbeque.
12. New accommodations, 21 total.
13. Moonlight tram tours.
14. Fee for Mariposa Grove tram tour.
15. Vending machines.
16. Retail sales added to T.M. Lodge.

EXISTING YOSEMITE CONCESSIONER PROFIT CENTERS EXPANDED SINCE 1980.

1. Marketing, catering, conferences (weddings, conventions, tours)
2. Bicycle rentals.
3. Cross country ski rental.
4. Mariposa Grove store.
5. Bracebridge Dinner (increased from 3 to 5 performances).
6. Yosemite Lodge: expanded retail space, expanded Broiler Room restaurant, expanded and relocated Mountain Room Bar, snack sales added to pool office.
7. Snack sales added to White Wolf Restaurant.
8. Breakfast service at Village Store hamburger stand.

(Source: National Park Service)

Senator **Bumpers**. Thank you, Mr. Frampton.

Gentlemen, you have all, I think, presented your viewpoints with exceptional clarity and a great deal of conviction. I have never fully understood this park concession system, because I do not know of anything comparable to it in the private sector.

I was a businessman, an attorney, and owned a few businesses and practiced a lot of law and represented a lot of corporations, but I have never known of an arrangement quite like this, and I am not prepared to say that it is all bad. I am prepared to say that it is highly questionable, and it seems to me like in this day and time that it is almost an anachronism.

So far as the 1965 Park Concession Act is concerned, there is a provision in there, it seems to me that has deteriorated into a form of paternalism with concessioners, and too much emphasis has been put on the idea that revenues to the United States shall be subordinate to the objectives of protecting and preserving the areas.

Now, as Mr. Frampton has just said, we all know that the first part of that—subordinating revenues—has taken place. We have subordinated revenues to the United States but there is a genuine question as to whether or not we have provided protection in the preservation of areas.

Now, Mr. Frampton sets out a whole series of profit centers in Yosemite that would indicate that an awful lot of the building and possessory interests that are being developed are in fact not to preserve the parks but to enhance revenues to the concessioners.

I wanted to ask you. Mr. Hanson, first of all, you have referred to the term "fundamental rights," and I am not sure what that means. When you are dealing with contracts the only rights are rights that are provided therein and that are supposed to be fair to both parties.

I get the impression from your testimony that you feel that there is some fundamental right that the concessioner has that is about to be breached if we changed the method of operations. What do you mean when you say "fundamental rights"?

Mr. **Hanson**. I believe my statement did not necessarily use the word "fundamental" in that context, Mr. Chairman. The fundamental right I think is the right of the American public to use the national parks for which they were created to begin with, and this is what is happening time after time, and Mr. Frampton referred to the fact about Yosemite not providing—or not having bus service. They were the ones who have provided the bus service. I think your committee should make certain you get the facts before you conclude on the matter.

But when you talk about fundamental, I am talking about the fundamental right of the American public to use and enjoy the parks, for which the parks were created—for people—rather than set them aside as sterile exhibits, where very few, if any, of the American public gets involved in it.

Our American public today is growing older, and as a consequence they are not the backpackers and hikers that they were 20 years ago, as much as some people would like to see them be that. Most of them want the comfort of some convenience when they go to the national parks, and they need the services and facilities that concessioners are using.

The Park Service still guides—the Park Service still determines what those services and facilities are to be. They set them out in their statements of requirements.

It has been suggested that the Park Service has been hoodwinked by the astute concessioners who have bevies of lawyers and all this type of thing to try to negotiate contracts. The very fundamental process of the Park Service in working out the contracts is that the contracts are negotiated. They must be reviewed and approved by the region.

They come to the Washington office if they are $100,000 or more, where the Washington office reviews them, and then, Mr. Chairman, those contracts are sent here to the committees of Congress and allowed to sit for 60 days for you to review and to comment upon and disagree with if you so wish, and every one of those contracts, Mr. Chairman, has gone through that process. So to suggest that there is something wrong with that process I think is suggesting that the Congress is wrong.

The fundamental thing that I am talking about, once we have entered into a contract, certainly we feel that we have a right to expect that the Government will keep their side of the contract as well as we, because we set forth our investment, we set forth our training of our people and encourage them to come on to us and to be long-term employees and become well trained, and they get involved in the service and want to make a career of it, and the fundamental right, then, is that they should continue to have those safeguards that are provided for in the law as well as the contracts.

Senator **Bumpers**. Well, Mr. Hanson, we are not here suggesting, and the purpose of the hearing is not to suggest, that either side is violating the contracts, nor for that matter that either side is really grossly violating the law, or the intent of the law.

What we are here to talk about is whether the law ought to be changed, and whether the law provides sufficient protection to those same people you are talking about in providing a fair return on their investment.

In your testimony here, you say "some of these very fundamental protections needed by concessioners are set forth in Public Law 89-249, that is possessory interest, preferential right of contract renewal, length of contract, franchise fee, and preferential right for additional services," and you say, "Mr. Chairman, those fundamental rights are needed today, tomorrow and in the future."

Well, I suppose those are legal rights once a contract has been executed, but they are not fundamental, except that they are rights provided for in the contract.

Mr. **Hanson**. Maybe I used the wrong terminology. They are fundamental tenets that if you are going to get the private sector to put up the money, absent the Congress building the facilities, or the United States Government, you know it is basic and fundamental in my thinking that you are not going to get anyone to put up their money when they are not going to get a return to them sometime, with some type of return—with a reasonable return.

Senator **Bumpers**. I would not invest unless I was going to get a return on it. If I owned your company, I would insist upon a return if I were going to build a marina or anything else.

Mr. **Hanson**. I think you have said it well for me. Thank you. That is what I mean. But you are not going to get those people to do that unless they have some protections, that they have possessory interest where they can go to the bank and borrow money and pledge it as collateral.

Where, if they get a preferential right where they can encourage people to come into our industry, rather than just going by—in fact, bring on someone and say we would like to have you come to work with our company. It is a great opportunity to work here. They say well, what is the future? When we tell them well, we only have 2 more years on the contract, or we only have 4 more years on our contract, they are not interested. They go some place else. They want to go some place where they can make a career and get involved in something that they can plan on for the future.

As a consequence, when you talk about the length of the contract, we need that length of contract. Whether you call it a right, or whether you all it fundamental, it is a fundamental basis that the bank will not loan you money if you are on a short-term basis, in large amounts, unless they foresee that you have the ability to pay that back.

Senator **Bumpers**. Do you think the Government has an obligation to your company to give you a preferential right in order to be able to attract the kind of employees you want?

Mr. **Hanson**. I think if they expect good service to the public, Mr. Chairman, that they have a right themselves, they have a right to the American public, to give that incentive to whoever it is, whether it be my company or anyone else, to encourage that type of person to be involved in serving the public, because the park visitors deserve the best.

Senator **Bumpers**. Let me ask you, how long has your company had the concession at Mammoth Cave?

Mr. **Hanson**. Since 1941, when the park was made a national park.

Senator **Bumpers**. That is 50 years.

Mr. **Hanson**. Next year, we will be celebrating our 50th birthday, yes, sir.

Senator **Bumpers**. Has anybody bid against you during that period of time, for that contract?

Mr. **Hanson**. I am not sure. You would have to ask the Park Service that. I am not positive.

Senator **Bumpers**. What is the current status of the contract? How many years is it for?

Mr. **Hanson**. 20 years. 1982.

Senator **Bumpers**. It expires in——

Mr. **Hanson**. 2002.

Senator **Bumpers**. Do you think that 20 years for a contract like that is excessive?

Mr. **Hanson**. No, sir.

Senator **Bumpers**. You do not?

Mr. **Hanson**. I do not.

Senator **Bumpers**. Do you know of any contracts like that in the private sector for 20 years, or do you know of any State that provides 20-year contracts?

Mr. **Hanson**. No, but I have worked very closely with the State of Kentucky, and I also work very closely with the State of Texas and the State of Michigan, and in each case of those, very few of them—the State of Kentucky operates their own parks. The State of Texas only has one or two that they put out for bid.

In most cases, Mr. Chairman, the State provides the facility. The Federal Government does not provide the facilities in the national parks. They look to the private sector to make that investment based upon the statement of requirements that the Park Service has developed, not what the concessioner develops.

Senator **Bumpers**. What input do you have in what construction is going to take place, what kind of possessory interest you are going to have?

Mr. **Hanson**. When the National Park Service develops an SOR we are given very little opportunity to have input, because they want to preserve that right as to what they want and need in the national parks. We would like to have more to say, if I would have my preference, because I think I could give them some advice.

Senator **Wallop**. Mr. Chairman, if you would forgive the interruption, the Secretary just this year signed that agreement with a concessionaire in New York State that is 60-years long.

Senator **Bumpers**. Mr. Hanson, let me ask you this question. You and Mr. Maughan both have talked a great deal about how you could not borrow the money to make these improvements if you did not have this contract. And that is certainly understandable. But that sort of goes against the basic reason we are here, and that is whether you ought to be building them at all or not.

Mr. **Hanson**. Mr. Chairman, I did not understand that.

Senator **Bumpers**. Well, if the Federal Government were doing the building and not requiring you to do the building or asking you to do the building and giving you a possessory interest in it, you would not have to go to the bank and borrow money, would you? At least you would not have to. You said you borrowed $5 million to build a marina at Lake Powell. Was that you, Rex?

Mr. **Maughan**. Yes.

Senator **Bumpers**. You said you borrowed $5 million to build a marina at Lake Powell, or borrowed $4 million.

Mr. **Maughan**. $4 million at Lake Mead, yes.

Senator **Bumpers**. Of the $5 million total?

Mr. **Maughan**. Yes.

Senator **Bumpers**. Was it at Lake Mead?

Mr. **Maughan**. Yes.

Senator **Bumpers**. My point is if the Federal Government built a marina and you were paying a respectable fee, you would not have to go borrow money to build a marina.

Mr. **Maughan**. Mr. Bumpers, if you would like to build all of our facilities and guarantee me a 5 percent return, a guaranteed return of the gross receipts as TWS has in Yellowstone, man, I would love to have you own everything, and you can go ahead and take it.

Senator **Bumpers**. I would build the marina, if I had my way about it, and I would not guarantee you anything. I would put it out for bids. And I would take a bond from the bidder to make sure the Government got its money. As far as I know, that is the way about 98 percent of the business is transacted in this country.

Mr. **Maughan**. Well, if you want to go back on 75 years of experience of what has happened in the national parks and get Congress to change that, I guess that is your prerogative. But I believe the day you do it, it will be the day that the degradation of the national parks go down, because it has been proven that the Government cannot do what the private sector has done, and that is why we are sitting here. That is why we have been investing our money. And so I guess that is where I think we like the free enterprise system or we want the Government to run everything. And if we do, then maybe we ought to bring Mr. Gorbachev over.

Senator **Bumpers**. Senator Wallop.

Senator **Wallop**. Thank you, Mr. Chairman.

I guess it does come down to a fundamentally different point of view. In my view, Secretary Lujan's appraisal of the situation is a completely incompetent view of ordinary business practice in America, and is ignorant of the system that he operates, and the system from which the benefits are derived.

Apparently the other view is that the Government is a good business operator, but the track record of government and business in this country is less than satisfactory. And unlike the Congress, the banks have to have some level of security before they will loan money. But the 5-year contract, to which the Secretary speaks in his report, even goes against the recommendation of his own task force, which is 15 years.

So it is hard to tell where the Secretary is coming from on this, in all honesty. Because it seems to be a basic indictment of the administration of the Park Service by blaming the concessionaires. And as I look through your testimony, both George and Paul, I do not see any place in any of them where you are saying this concessionaire is doing something wrong. I mean the Wilderness Society seems to have something of a case of heartburn about Yosemite.

But I do not see any place in there where you say that any concessionaire has performed inadequately. And if you have those things, maybe that is a good thing to do.

Mr. **Pritchard**. Senator Wallop, if I might. On page 6 of the testimony, which I am sorry I referred to, I do refer to specific incidents where we do believe the issue of necessary and appropriate has been pulled into question, if not violated. For procedural reasons, we did not have standing the issue of the Potomac Restaurant, for example, which is, as you know, is just at the other end of the lake.

Senator **Wallop**. But is that the fault of the concessionaire or the people who granted the concession?

Mr. **Pritchard**. I think you make an excellent point in saying that the system is not working. And we are trying to point out reasons on both sides.

Senator **Wallop**. But my whole point is that you are not going to change these kinds of decisions by changing the system. You have got to change the attitude of the Park Service. Changing the length of times of concessions, and the ordinary ways in which those contracts have been arrived at is not going to make for good decisions as to whether or not facilities ought or ought not to be expanded.

Mr. **Frampton**. Well, Senator, let me agree with you, in part, but disagree in part as well.

Senator **Wallop**. You be careful a little bit.

Well, let me just say that in your testimony you mentioned that there is an attachment that lists new and expanded Yosemite concession profit centers established since 1980, but not specifically authorized by the general management plan. Now I think we both agree that implementing the general management plan is the responsibility of the National Park Service.

But is it not true that each of the items that you have listed was either authorized by the National Park Service, or was allowed for within the general management plan, or existed prior to the general management plan? And, in fact, is it not true that the number of concession operations in Yosemite has decreased since 1980?

Mr. **Frampton**. It is true that the Park Service approved every one of those additional profit centers. And I think I made the point in my written testimony that the Park Service has hardly been blameless in this.

Senator **Wallop**. Is there something wrong with profit?

Mr. **Frampton**. There is nothing wrong with profit, but the problem is that the—when you say we have some heartburn about Yosemite Park and Curry Company, Yosemite Park and Curry Company has provided, as far as I know, good visitor service. I think that the Yosemite Park and Curry Company and the people who manage that company have a genuine and sincere desire to protect Yosemite National Park. They care about the park.

Senator **Wallop**. In fact they are cited in Mr. Pritchard's testimony as genuine park conservationists.

Mr. **Frampton**. The problem is that they are also running a business, and they have conflicting motives to maximize profits. And in this case, you have the Yosemite Park and Curry Company continuing to engage in activities, because it has a 30-year contract, or adding activities that are inconsistent with the general management plan, and inconsistent with the conflicting goal of protecting park resources.

Senator **Wallop**. Mr. Frampton, please. I mean you owe it to everybody to give an honest appraisal of what is taking place there.

And, Mr. Chairman, I want to submit that the exact situation that exists with regard to the list of profit centers, that terrible word that Mr. Frampton has submitted, just, for example, he says there is a tobacco shop. There is no tobacco shop in Yosemite Valley. He probably is talking about the sweet shop. And this is an ice cream counter that was converted to sell sundries in the identical space. It already existed.

The camp store at the ice rink authorized on page 40 of the general management plan. And it goes on and on. Lunch service at the golf pro shop existed prior to the general management plan.

Mr. **Frampton**. Senator, why not just put it into the record—if you do not, I will, because I have it—Mr. Hardy's letter to me responding to our testimony, which you are reading from. I will be happy to put it in the record.

Senator Wallop. All right. But just for the record, each of these things were either specifically approved by the superintendent, or are in the general management plan, or existed prior to the adoption of the general management plan.

Mr. Frampton. No.

Senator Wallop. Every one of those on this list.

Mr. Frampton. No, sir, not in the general management plan.

Senator Wallop. Most of them were, and those that were not existed before or had the specific approval of——

Mr. Frampton. Mr. Hardy is incorrect in that assertion in the letter. These are not profit centers that are called for or consistent with the general management plan. He also makes the incorrect statement in the letter that, with the reduction in lodging facilities in the valley this year, the number of lodging units will be brought into conformity with the general management plan. That is false. The general management plan calls for a 17 percent reduction in lodging facilities. And when they take——

Senator Wallop. Is that the concessionaire's fault or is that the Park Service's fault?

Mr. Frampton. Excuse me, Senator. When they take 20 cabins out this year, it will bring it back to what it was 10 years ago, not down 17 percent.

Senator Wallop. But the whole level of concession operations in the park has decreased since 1980.

Mr. Frampton. The level of concession operations?

Senator Wallop. Yes.

Mr. Frampton. The level of concession operations has not decreased.

Senator Wallop. Numbers. Not the level, the number.

Mr. Frampton. Well, the number of concessionaires—Yosemite Park and Curry Company is the only principal concessionaire. There are a couple of other small concessions, such as the Ansel Adams Gallery. But there may have been an individual fudge shop or something that was absorbed by somebody else. But the level of total concession operations in the valley, as a level, has increased. It has not decreased. The number of individual shop owners may have decreased by one or two. That may be what he is referring to in the letter.

Senator Wallop. Who do you think is going to be around in 60 years, or say 45 years, taking a look at the contract that the Secretary just made in New York for 60 years, and saying that that has some kind of a—you can second guess it, because the economic circumstances 60 years from now will not be the economic circumstances of today. It is hardly the fault of the concessionaire who bargained at arms length with the Secretary. And the Secretary proudly announced that he had done this, it is hardly the fault of the concessionaire that economic circumstances may have changed in 60 years time.

It may be that the guy goes broke. But that is both of their risks.

Mr. Frampton. Senator, I think you can understand the thrust of my testimony. We are not blaming the concessionaires. The concessionaires are exercising contract rights.

Senator Wallop. The Secretary is and the tone of both of your testimony here is.

Mr. **Frampton**. No, that is not the tone of my testimony, Senator. The concessionaires are exercising contract rights under the existing law, which put them in a tremendously unfavorably—the Government and the public interest, taxpayers' interest, in a tremendously unfavorably position, and allow them, rather than the Park Service, to govern the management of many of our major parks. That is not their fault. They are in business to make a profit.

Senator **Wallop**. I just reject that out of hand. I cannot believe that a park that wanted to operate within the terms of the contracts that they have written, Yosemite or elsewhere, cannot achieve what they want out of it. Or that their contracts have been badly written. It has nothing to do with possessory interest or preferential rights of renewal. And I can tell you, in my own State, where preferential right of renewal was abandoned over—I mean was rejected.

Mr. **Pritchard**. Senator, whether or not you believe us, I think if your point is that the concession system directs and controls the Park Service, I would agree with that.

Senator **Wallop**. No, that is not my point. My point is that the Park Service directs and controls the concession system. And they are the one who may or may not write these contracts. And Congress is the one who has a say in whether or not these contracts are approved. And we have.

And it is not the fault of somebody who entered into an armslength negotiation with the Government of United States, if the Government of the United States looks back and says the fee should have been higher 15 years into the contract.

Mr. **Pritchard**. Senator, in 1975 and 1980, the GAO, your own General Accounting Office, has repeatedly said, as it did in 1975, the GAO recommends that the Congress finance future construction of Park Service concession facilities whenever possible to avoid problems caused by possessory interests.

Senator **Wallop**. And with what?

Mr. **Pritchard**. Whether or not we are saying this, this is your own. I can go back and state reports to 1948.

Senator **Wallop**. There is nothing new with me finding fault with the processes of the General Accounting Office, which is not known for business acumen either. They may know how to account, but they do not know a hell of a lot about business. And government does not. But, in fact, the Director of the Park Service himself takes issue with the methods of determination in that regard.

Let me try to get some of my questions in.

Senator **Bumpers**. Let me interrupt both of you to announce that there is going to be a roll call vote at 11:15. I do not know whether we can conclude the hearing by then or not, I would like to think that we could.

Senator **Wallop**. I have just a couple of questions, Mr. Chairman.

Senator **Bumpers**. Okay.

Senator **Wallop**. Paul, you indicate that you surveyed the State park system and found that the concessionaires pay about 9 percent. You also say that for the general and public it is about 5 percent, which generally——

Mr. **Pritchard**. I am sorry, I missed your comment there. The private franchises generally pay 5 percent, but they also pay an up-front fee to purchase the franchise.

Senator **Wallop**. They also pay an up-front fee to purchase the franchise, but they also provide the overall management of the structure, basic advertising and everything else that the individual concessionaires really does not have to do. So there is a big difference.

Mr. **Pritchard**. That is not my understanding, Senator. In most cases, the management of the facility is directed by standards by the central company.

Senator **Wallop**. That is exactly right.

Mr. **Pritchard**. And those provide advertising.

Senator **Wallop**. If it is McDonalds, they get the french fries from a central point. You do not get that if you are operating in Yosemite or Mammoth Cave or Lake Powell.

Mr. **Pritchard**. And we would like to see more of that. You are absolutely right.

Senator **Wallop**. Do you think the Government ought to get in the position of buying potato chips from one person and distributing them throughout the park system?

Mr. **Pritchard**. I do not think that is the issue. The issue is that the Concessions Policy Act directs the Park Service to determine issues like superior performance. You already heard this morning that concessionaires cannot even raise the cost of a cup of coffee without the approval of the Park Service. So you have a system now that does that.

Senator **Wallop**. Let me ask you about the 9 percent in the State parks. Did your survey include questions about whether concessionaires invest in the State parks as they do in the national parks?

Mr. **Pritchard**. We are doing the survey right now. We would be happy to include any questions you would like to have addressed.

Senator **Wallop**. Are the facilities State-owned, and thus require no investments?

Mr. **Pritchard**. Again, I think as Mr. Hanson said, my understanding of the responses to the survey is that many of the States say we do not even believe the private individual should have the responsibility or the right to build facilities. The State governments themselves build those facilities, and Mr. Hanson confirmed that.

Senator **Wallop**. Well, let me just suggest to you that you take a look at the negotiations going on right now at the budget summit and tell me how soon it would be that we would do a good job of refurbishing the National Park System under the present set of budget circumstances. You are going to have to involve the private sector. And it is not an evil, it is a benefit.

But you criticize the concept of possessory interest. Last year there were 600,000 visitors who attempted to visit Denali. And only 150,000 were allowed into the park because of a lack of facilities. There is a rationale applying to the private sector to build appropriate facilities and infrastructure for that park. But a return on their investment would no doubt take a substantial amount of time.

Would you agree that in this case, granting a possessory interest and other incentives would be in the best interest of the Government and the American taxpayer?

Mr. **Frampton**. I would be happy to respond on the issue of Denali specifically, since that is a——

Senator **Wallop**. I was directing the question to Paul. I am sorry if I said George.

Mr. **Pritchard**. I am sorry, I thought you were referring to his comment.

Senator **Wallop**. No, it came out of your statement.

Mr. **Pritchard**. I think the issue has to begin with what is necessary and appropriate. In the case of Denali, you bring up a very interesting point, and one that we make in our testimony. And that is, we believe more facilities should be in the private sector in the communities surrounding the national parks, rather than in the parks.

In Denali you have a unique situation where the facilities are practically at the edge of an in the community of Denali. So I think that is a difficult one and not one that would be appropriate for your point, Senator Wallop. But I am not sure if you are referring to Mr. Frampton's testimony, which he would be better able to respond to.

Senator **Wallop**. My problem with the approach that you both are taking is that we have rangers living in transportation containers in the Channel Islands Park. That is the level that the Government is able to do right now in just housing its own employees. If we are going to have the kind of visitor facilities that exist in the National Park System, which are the envy of the world—you both visit national parks around and about the rest of the world, and I do not know of any of them that have any better facilities than we do.

I have been in England, I have been in China, I have been in Africa, I have been in various parts of Europe, and I do not think that we provide bad facilities and bad activities for worldwide visitors to our national parks. And it is done with private capital. And if you start trying to have the Federal Government buy into those, one, they will be badly run; and two, they will not take place because there is too many other competing interests. And that is my point. That is one reason why—and I appreciate your endorsement of my idea that helps get us back in the refurbishment business and get us into the infrastructure area.

But I think, fundamentally, you are going to have to have a concession system that recognizes that people are going to have to find the resources against which you borrow capital and invest money, or they will not do it. And the visitor in the Park System will be the sufferer.

Senator **Bumpers**. Senator Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator **Murkowski**. Mr. Chairman, thank you.

First of all, I want you to recognize that I do not believe the Federal Government is capable of basically playing a major role in the business of managing, running, and negotiating concessionaires or Park Service contracts overall. And I commend the Chairman for his concern in addressing what is really a bag of worms in the sense that there is no consistency.

You folks are businessmen, and your bottom line is to make a return on investment, as well as providing a service. And probably in that order. But the reality is that you are negotiating your individual contracts with non-professional Park Service personnel individually. So the uniformity of a policy is very much lacking. And I think the basis for the Chairman's concern, partially, is there is a lack of consistency and a lack of uniformity. And I do not think that either of you, if we sat down and examined your particular contracts, could find a basic structure that represented uniformity or equity.

So each time you negotiate, you are negotiating with a new Park Service representative, the guidelines are so broad that they can hardly stand the light of day. So, as a consequence, we look at this thing to try and say, well, are there guidelines that are reasonable and responsible, that are easily understood, that are open so that the public that questions us can understand.

I cannot find out from the Park Service the rationale of my three major parks in the State of Alaska and the concessionaires fees. Because they have been dealt over a different period of time, and it is kind of like "buyer beware." You folks are entitled to make the very best deal you can, but on the other hand, the Government is entitled to a uniformity and a policy that is clearly defined and understood.

So, I think, the Chairman's interest in looking at this, and the Secretary's, bears a responsible and reasonable effort. On the other hand, to put the Federal Government in the business of providing the services in the park, I could be more opposed to.

Now you get into this dilemma of how you are going to develop new facilities in the parks when clearly you are under budget constraints. But there is room for innovative financial examination. There is no reason, for example, why you could not explore the idea of the Park Service, through the Federal Government, issuing a general revenue bond for the benefit of specific projects in the park if you want a road, if you want a bridge, whatever. And then you tack on an increase in park entry fees in each individual park, and you apply that back and retire the revenue bonds.

Now that is not taking everything that now goes into the general fund, it is dedicating specific funds for specific improvements. I think these are the kind of innovative approaches that we must pursue if we are going to provide facilities for the park. And my park at Denali is a real dilemma. We have got 600,000 people that want to get in, and can accommodate 125,000 that got in last year. And you are hours away from seeing the mountain at the beginning of the park. And the Park Service has no policy, they have no plan, and it is a status that is just kind of left up to whoever the Park Service director is.

And I think we need a policy represented, particularly in the Western parks, where the development scenario has just been left untouched. And that is why, Mr. Pritchard, in your statement I am a little confused when you criticize the concept of possessory interest. Because I do not know how you are going to get there from here.

We brought the question to you and you basically dodged it by saying, well, that is not applicable in most instances. I would grant you, but what is applicable in a specific instance, and this is a specific instance?

And, Mr. Frampton, you and I have different views on Alaska, obviously, but I was glad to hear your suggestion that there should be facilities built outside the park, as opposed to in the park. But that is a problem that every time we try and do that, the national environmental groups say, oh, absolutely not, we have got to make that into wilderness, too.

So in your last issue, the Alaska Lands Act, a broken promise, you want to put the whole State in wilderness, and I understand that, because that appeals to the national environmental movement, and none of you have to live in Alaska or make your living up there, so you print a book that looks like a government publication and say, put the whole State in a wilderness, and you attract membership and you attract dues. And that makes you feel good and makes me feel bad. And I guess that is the way it goes.

[Laughter.]

Senator MURKOWSKI. But you give our delegation credit for having too much influence on the dedication of Alaska lands. Well, I do not know how to respond to that, other than to say I am somewhat flattered. But I think the Chairman is correct in saying, hey, we need to have a uniform policy that everybody can understand with the concessionaires, and the franchise fees, and the whole business. But then I think we ought to set some parameters that are understood, if there is a facility to be built and it has to be amortized over the course, then of course it is transferrable.

But I think to dodge the issue of improvements by saying, well, we hope that we can work something out by osmosis some day, either through a budget process or get the concessionaires to put enough investment, and it begs another alternative, and that is some innovative revenue financing schemes that are perfectly legitimate that can be sold in the private sector if the return is reasonable, and the dedication of the funds back to amortize those specific improvements that are agreed upon.

Thank you, Mr. Chairman, for the opportunity to address this matter, because it is something of great interest to the Senator from Alaska.

Senator BUMPERS. Thank you.

Senator Conrad.

Senator CONRAD. Well, I hesitate to follow up on that. But I will ask some questions.

In reading press reports, I am sure you all saw the Washington Post profiteering in the parks, concessionaires contracts cost U.S. tens of million of dollars Hill is told. I would be very interested, in order to try to understand whether people are getting outrageous profits and not paying a legitimate fee. Do we know?

I see various indications. Some of these say $500 million of gross receipts, some say $500 million of gross profit. It is not clear to me which is which.

And I would be interested to know what are the gross receipts, what are the gross profits, and what is the return on investment? I think most business people evaluating an investment, they could care less about gross receipts and all of these numbers, what they are interested in is what the return on investment is.

Can any of you gentlemen shed some light on that for me?

Mr. MAUGHAN. Yes, Mr. Conrad, I would be happy to do so. I indicated earlier in my testimony that this $500 million figure that has been bandied around and called profits is in fact the gross receipts of all concessionaires throughout the whole system. And some of those concessionaires do not have any return on their investment. Some of them actually lose money, and some of them are fortunate to have been in business for a while and have parks where there is high visitation, and they are able to have a decent return on investment.

And everybody seems to think that profits is a dirty word. And I thought that is what America was based on, was the free enterprise system, with an opportunity to make a profit. And that is what the Concession Act really came out with.

Mr. Hanson has indicated in his testimony that if he had to pay the 22 percent that the Secretary has recommended, he would have to borrow 15 percent of it from the bank to pay it, because there is not that much money taken in.

Senator CONRAD. I tell you, I was concerned about that. After dealing with the news media for a number of years, I have become somewhat suspicious when I see numbers used that may be misleading more than they are enlightening. If we are talking about $500 million of gross receipts, and all of the expenses have to come out of that, that is a much different piece of information than to be suggesting to people that there is $500 million of gross profit. That is a totally different concept.

Mr. MAUGHAN. Mr. Conrad, could I also add. I used an example of my facility in Lake Mead that I built for $5 million that I had to borrow $4 million from the bank for, which I would not have been able to do without my possessory interest in that. And today I still have not earned any return on investment. I am still hoping that it will attract enough people, and in the future I will make a return on it from that investment.

And I think this is the thing that has to be looked at. Everybody only looks at one facility or at one concession or two when they were doing this. The Inspector General only looked at the 14 largest ones, he did not look at any of the average or normal ones.

Senator CONRAD. I want to frame this a bit. First of all, I do not think there is any way the Federal Government is going to own these facilities. The Federal Government is in deep trouble financially itself. And so I do not think that, if that was the goal, that it is a realistic prospect. So the question is how are we going to involve the private sector in a way that ensures that they pay a reasonable amount for the right. It seems to me that is the issue before us.

How do we ensure that they pay a reasonable amount, that there are not some wild, windfall profits out there? That seems to me to be the challenge before us.

I can just point to a couple of the concessionaires in my State. I have got them running a trail ride, for example, with $50,000 of gross business volume. There is no profit. They are losing money. And we impose a 22 percent fee, and that trail ride is just not going to be available. And so I think we have got to be very careful on how we approach this, and so we do not just respond to the newspaper headline and create a bigger problem of not having services available to people when they go to our parks.

At the same time, I do not want to see people who are concessionaires getting rip-off profits. And I would be interested, Mr. Maughan and Mr. Hanson, from your perspective, how do we meet that test?

Mr. MAUGHAN. Mr. Conrad, I appreciate that, because the system that is in place, since 1980, the Park Service has been reviewing all contracts and their franchise fee clause has it that the Park Service can review the franchise fee and unilaterally increase it or decrease it. To date, I have not seen any decreases, but they are doing a very good job. Whenever we have 5-year renewals come up, we have to sit down with them, and they are continually increasing those, some of those far in excess of Mr. Pritchard's 5 percent, which is in the normal, or the outside of the business.

And in outside the park, Mr. Pritchard, you have got to remember that the Park Service is not regulating your pricing. We continually every year have to go to the Park Service and sit down and beg them to let us raise the price of hamburgers or of the food or of the lodging. And their idea is it should be the lowest price possible because Park Service do not make much money, and in order to be able to afford to go to it, it has got to be a low price.

And they do not realize that the best room in the house usually is the one that sells first. The people that come to the parks want a nice bed so they can sleep well and have a nice breakfast in the morning, so they do not have to worry about those mundane things so they can go out and see the beauties of the park.

And so the system is in place. It has been working good for the last 10 years. The people that you are talking about, the concessions you are talking about, and the things you read in the newspapers are contracts that were signed 25 and 30 years ago, who maybe now only have 2 or 3 years left to run, and they will be renegotiated, and they will be paying very high fees, a lot more than the 5 percent that Mr. Pritchard has talked about here today.

Mr. PRITCHARD. Senator, I think you raise an excellent point about the issue of what are the statistics we should be basing our discussion about today. And I think that is a very important point. And the need for Congress to act to make sure that this information is public. These are public enterprises. They are contracted with the Park Service. There is nothing comparable to any private sector role here that we could find in any way. This is all done in a very confined environment, working with the Park Service, and then all the information is locked up.

And we would agree with you 100 percent that we need to have that information out on the table. Mr. Maughan keeps on referring to this as a private enterprise opportunity. This is not a private enterprise. This is an enterprise that is a monopoly and should be treated as such, given every opportunity to make a reasonable return on its investment, but not to the extent that the American people pay and receive nothing back in return.

Mr. MAUGHAN. Mr. Conrad, the fees are public knowledge and people can get them. The only thing we are talking about is we do not think that all of the general statistics and numbers that we have on our financial statements should be turned over to the public for them to criticize, which they are certainly doing, and for the competitors to come in and know everything about our business where we do not know one thing about the people coming in to compete against us. And we cannot get that from anybody, so that is certainly not a fair way to do business.

You do not do business that way on the outside of the Park System, I do not know why we should do it in the inside.

Senator WALLOP. Kent, would you yield for an observation.

Paul, you cannot have it both ways. You cannot have it on one side saying that this is a public sector business arrangement, and then compare it to the private sector in terms of fees and other arrangements. It just is not appropriate. And I think you can see from that how different the two arrangements are.

Mr. PRITCHARD. Senator, if you are agreeing with me that this is a monopoly, then I agree with you. If your point is that these are not private sector and they are not competitive, as was reported by previous reports, then I agree with you on that. And therefore I believe Senator Murkowski's point is very important, and that is, we need to have a careful examination, which I think was his point. I think he confused my testimony, but I would agree with the key principles that he pointed out.

And I am fully in agreement that there should be uniform policy, there needs to be creativity, and there need to be parameters. And, Senator, we will work with you in any way to achieve those.

Regarding the possessory interest issue, we do not believe we know of any private enterprise that is guaranteed possessory interest in the way that you have pointed out, Mr. Chairman. This makes it a very unique business enterprise in this country. There is nothing else comparable to this. And it requires a careful examination by the Congress, and a careful reexamination of what seems to be the problems with the system right now.

From our standpoint at NPCA, we believe very much the point that the Secretary made, that you do need the private operation of those facilities. But we believe also, as he said, that the facilities themselves should be owned by the public. And that is why we suggest that the fees portion of those go back to the purchase of those possessory interests. It is very simply and it is the point that has been made in previous reports.

Senator CONRAD. Let me just ask Mr. Pritchard and Mr. Frampton, do you have any evidence that those private concessionaires are getting a return on investment that is outside of what we would anticipate in other parts of the private sector?

Mr. FRAMPTON. The facts you are looking for are in the Inspector General's report. The Inspector General did study in detail only the largest concessions, but the Inspector General examined the net income, before taxes, which is being made by each of those operations, and compared it to Dun & Bradstreet industry norms for return on investment capital. And in the case of every one of these concession operations studied, the Inspector General's report finds, and it is in an appendix that you will be able to find the numbers laid out on one piece of paper, that invariably each one of those concessionaires is making about 2 to 3 times, 200 to 300 percent of the industry norms of return on invested capital made in the private sector.

And the reason for that is a combination of monopoly profit and the fact that the Park Service is locked in many of these cases, with long-term contracts, which renders it unable to increase the franchise fees from a historical number that was set 10 or 15 years ago, which is not appropriate to today's economic situation in those particular parks.

Senator CONRAD. Well, I thank you. You have provided me, frankly, the information that I think is most relevant for making a decision. If there is a return on investment that is substantially in excess of what one could expect to get elsewhere, and part of it derives from being in a monopoly position in a public park, that needs to be addressed.

And Mr. Maughan, I would just say to you that that is where we may have a disagreement. If you are given monopoly status in a public park, that is different. And it seems to me the relevant outcome is that if you have a return on investment that attracts people to make investments, that is fair. It is not reasonable, if we have got situations where people are getting a return on investment that is substantially in excess of what it would take to attract the investment.

Mr. FRAMPTON. Senator, I would agree with you that there are some places where a very low franchise fee or even no franchise fee may be appropriate. Alaska may be one of those situations. The Wilderness Society is not totally against additional facilities and visitor services in Alaskan parks, but it should be done in a way that protects resources. In some of those situations it may be important to have some continued possessory interest and very low franchise fees. But in most of the bigger parks, as the Chairman pointed out, this has become economically obsolete.

Mr. MAUGHAN. Mr. Conrad, you did not get good information again. The 2 or 3 times that they were talking was not over the D&B report. The D&B report is absolutely erroneous and is not a good factor. It is talking about a 2.8 percent return. The Secretary here last Wednesday said that he felt that you should get at least 6 percent return on investment, which I indicated in my testimony earlier.

What he is talking about is not return on investment, it is return on what they are trying to put is an industry standard, which is not an industry standard. And that is a place where the Park Service needs to do a better job. And there are some people, Horvath & Horvath and the Parnell Group, and other great firms out there that can help them do that. And we would certainly recommend it. We think this is something that should be done.

But remember that the few people that they looked at in there was only those 14 largest concessionaires, which most of them are coming to the end of some contracts. And when those are renegotiated, they are not going to have those kind of returns. And remember that of the 540 concessionaires in the national parks, most of them are making a very low return on investment. Some of them are not even making a profit. And you cannot throw out the baby with the wash. And that is what this appears to be, the Secretary's proposal.

Mr. **Hanson**. Mr. Conrad, Mr. Frampton made reference to the profits of these concessionaires. Evidently, he has access to a report that not all of us have access to, so I cannot rebut some of the comments that he made about the profits. But the report of the Inspector General, by court order, has certain information redacted from it. So evidently he has seen something I have not.

Senator **Conrad**. Well, let me just go back to Mr. Frampton quickly, because I want to make sure I understand. What I would be interested in is return on investment. If you are an investor, most people in the business world, they are interested in what is going to be their return on invested capital. I heard you first say that the reports that are in the appendix reflect net income. Of course, you would go from net income to return on investment, but do these calculations actually provide a return on investment comparison? Or do they provide a net income comparison?

Mr. **Frampton**. I think you would have to ask the Inspector General, because I do not think there is a complete description in the report. But what the Inspector General undertook to do, according to the report, is to try to find, through Dun & Bradstreet, an industry norm for the net income returns earned by these kinds of businesses in the private sector, and apply that standard.

Senator **Conrad**. Let me just say to you that there could be a problem with that. The problem could well be, if you are operating just part of the year you can have a net income number. But when you translate that to a return on investment number, it changes quite dramatically. I mean I can just tell you in my State, we have concessionaires who are outside the park. They only operate 3 months of the year. If you looked at a net income number, that would not be an unattractive number.

If you look on a return on investment number, it is very unattractive. In fact, frankly, these people are doing it mostly as a labor of love.

Mr. **Frampton**. Senator, I think you would have to go to the Inspector General and the Inspector General's report. I would suggest to you, however, that in the case of the concessionaires that I am familiar with, and Yosemite Park and Curry Company is an example, the book value of their net investment is very, very small. So if you are going to look at return on the actual capital that is invested by the company, they may be making 50 or 100 percent return on real invested capital. Because the value of the underlying capital assets is mostly historical appreciation due to the monopoly position they are in.

It may be that if you undertook to look at this and compare it in terms of ROIC, return on invested capital, that the returns would be hundreds of times what a private business would make. I do not know what the Inspector General did. All I know is that the Inspector General undertook to compare this to industry norms using a Dun & Bradstreet calculation, and you have to ask the Inspector General and the Park Service, and they found that those 14 concessionaires, the big ones, are making 2 times to 3 times the industry norm in net profits that one would otherwise expect them to be making in the private sector.

Mr. MAUGHAN. Mr. Conrad, let me amplify that a little bit. And Mr. Frampton evidently is not an accountant. When you talk about your return on investment, it is the return on the amount of dollars you put into it, it is not your book value. Because eventually your book value is zero, and you would have of course enormous returns on it. And so that does not even make sense.

The Inspector General's reports and the things that have come out, they are talking about the return, the profits, they were actually talking about the profits that the concessionaires are making based on gross revenues in relationship to these D&B norms, and it does not have anything to do with return on investments at that site. So we would be happy to submit to you and show you what returns on investments are on the average, or in any particular parks or all of them if you would like.

Senator CONRAD. Would you agree with me that that is the relevant statistic?

Mr. MAUGHAN. Yes, I think it is. It certainly is if you are any place in business. Return on investment is something that everybody should have. If you do not have a return on investment, you are not going to invest your money in the facility.

Senator CONRAD. Mr. Hanson, would you agree with that?

Mr. HANSON. Generally, yes. But we also would like to have the capital at some point in time returned to, not just the return on the investment itself. Certainly, if I put it in savings and loan association at 8 or 8.5 percent, I could get that, and then when the time is up I would get my money back. Or if it went out of business the Government would pay me.

Senator CONRAD. I do not think we want to start holding the S&L's as an example.

[Laughter.]

Mr. HANSON. I am sorry about that.

Mr. MAUGHAN. I think that we should be talking about how are we going to make it a better environment for the private sector to provide the buildings and facilities and services that are required in the national parks so that the parks continue to be better. Because I am proud of them, and I think all of you are proud of them, and we want that to happen in the future. And that is why we are here to help you.

And I wanted to just tell Mr. Wallop one thing. On Ellis Island, they suggested and recommended a 60-year contract. And that is what it should have been in order to take care of the facilities and the investment that should be there. But the Park Service actually issued a 15-year contract when it came out.

Senator WALLOP. Fifteen?

Mr. MAUGHAN. Yes, 15 years.

Senator WALLOP. The Secretary told me 60 years when he met with me in my office. And he was bragging about it.

Mr. MAUGHAN. He has been doing that for months, and we have told him. And I guess like Senator McClure told him last week, you do not listen, because we have told him 100 times and he still goes around quoting that.

Senator BUMPERS. That is a very unique situation there. That concession is granted to the foundation who raised all the money to restore Ellis Island. It is not even considered a profitable operation. Nobody is suggesting it is. It is a group of people who had a deep and abiding interest in the preservation of Ellis Island. They went out and raised the money themselves. The Federal Government did not do it.

And so we turned right around and did what any decent person would do. We said we were going to give you the concession on this, to let you operate it, because we did not have a dime invested in it, and we knew that their heart was in the right place, because they had raised all the money to restore it. Not to get return on investment, not to get a return on capital, or anything even close to it. It is to operate it as a visitor center.

Mr. Hanson, you say people do not like these visitor centers where they see murals on the wall and all that sort of thing, well, I disagree with that.

Mr. HANSON. I did not say that. I hope I did not leave that anywhere.

Senator BUMPERS. Well, you left that impression with me.

Mr. HANSON. Oh, certainly not, sir. The only people that we serve is the American public, the park visitor. And when we lose sight of that, we are all going to lose.

Senator MURKOWSKI. Mr. Chairman, could I make a very short observation on a point Mr. Frampton has brought up numerous times in reference to monopolies. And the sensitivity I have is if you are going to have an investment, there has got to be a return. These franchises, by their very nature, indicate that there will only be one servicer.

To suggest that the monopoly has a connotation that is very negative, I think needs to be clarified. And I think it is an inappropriate use of the concept of a franchise contract award. And I would just urge that Mr. Frampton reflect on that a little bit. Because I think the image that you are putting out for the public consumption is that there is something wrong with this concept, when in reality it could not be set up any other way. There could be no competition unless you wanted to throw the whole process out and start again. So, I think, in all fairness, monopolies is incorrect.

Mr. MAUGHAN. If I might add one thing. When we are talking about the 22 percent at Yosemite, I hope that you all realize that that 22 percent does not go to the Government. That 22 percent goes back into the facilities, and the Park Service and the concessionaire uses it for the buildings, not one dollar of it goes back to the Government. So the Government is getting a zero return on your $20 million investment that you put in.

And so for you to use that as a guideline for the future is absolutely not a good principle.

Senator BUMPERS. Mr. Maughan, let me just say in closing that I think the private sector should operate these facilities. Now in Arkansas, we spent a tremendous amount of money on our parks when I was governor. We spent more in the four years that I was governor than in all the previous years that the park system there combined. And we developed some really fine parks. We improved other parks. And the Park Service in Arkansas actually runs some of these concessions. And there is the usual amount of squawking and complaining about them, whether they are privately run or they are run by the State.

I personally have a preference for the private sector running these concessions. But I must say I take strong exception to possessory interest. And I take strong exception to these renewals with the 5-year negotiation on fees. And I take strong exception to the preferential right.

I do not know, and I am going to check, but if I were going to compete for Mammoth Cave, Mr. Hanson, or even Lake Mead, Mr. Maughan—how long have you had the concession there?

Mr. MAUGHAN. Approximately 10 years.

Senator BUMPERS. Mr. Hanson has testified that in almost 50 years, since his company has had Mammoth Cave, that there has been no challenge, as far as he knows. He cannot think of any challenge to their operation there. And I am not saying that is all bad. And I might also say that so much of this information is proprietary. Do I have any right to know exactly what your gross sales were and your net profits?

Mr. HANSON. I gave them to you, sir.

Senator BUMPERS. I am talking about looking at your books. Do I have a right, if I want to bid when your contract expires, and I am a competitor, can I go to the National Park Service and find out what kind of money I think you are making out of it?

Mr. HANSON. I would hope not, unless I have access to the books of the ones who are bidding against me.

Senator BUMPERS. Well, on a preferential right, is not that essentially a right of first refusal?

At the end of your contract you have a preferential right. Let us assume that I would like to have the concession at Mammoth Cave. And, in effect, the way it has been interpreted and the way it is operating right now, you are paying the Government a 2.5 percent return on your sales, and let us say your sales at Mammoth Cave are $3 million a year and you are paying the Government a 3 percent return, and I come in and I say I will pay the Government a 5 percent return, I do not get it. They go back to you and give you the opportunity to meet that, do they not?

Mr. HANSON. Well, in the short term you might say that. But, Senator, there is a lot more involved than that.

Senator BUMPERS. But do you think that is fair? Why would I waste my time even developing a bid knowing that if you want to match it I am not going to get it?

Mr. HANSON. There is a lot more to it than that, Mr. Chairman. First, the Park Service looks to the experience, they look to the continuity of operations, and they look to the public interest in deciding what is best in the public interest. And this is why some of those things take place.

Now if it was strictly an open bidding process with no other factors being involved, your point may be well taken. But when the public service is the key factor that the Park Service has a responsibility to care for, and the public who own those parks have a right to expect, then they are looking for that continuity of service, they are looking for something where they have people who are trained and dedicated to their job and can expect the same thing today, tomorrow, and the next day, a consistent operation.

Senator BUMPERS. If I were the Director of the Park Service I would issue request for bids or request for proposals, and I would set out in great detail what we would expect from that concessioner, including courtesy and treatment of the visitors, housekeeping, experience, past record, and everything, and probably maybe even require a bond for performance. And I would say, okay, all you concessioners out there who are interested in this, you bid. My job is to do two things: protect the resources of the parks to see that the people are courteously well treated, and that the government gets a fair return. After all, it is our property.

Where else can you say here is a brand-new hotel, we just built it, you take it and run it and give me 2.5 percent, and you make sure the air conditioner continues to work, and that sort of thing? That is absurd. We do not do that in the private sector.

Senator WALLOP. We do not do it in the parks.

Mr. MAUGHAN. We do not do it in the parks because the Government is not building the hotel for us.

Senator BUMPERS. What is the difference between a hotel and magnificent scene like the Grand Canyon or Yosemite or Yellowstone? What is the difference?

Mr. MAUGHAN. Well, most of them are 3-month operations, and you are not going to make enough money to anywhere near pay for the mortgage payments on it. And, Mr. Chairman, let me just say this, you are asking why should you have a preferential right to renew. That is far short of what you do in the outside sector, because like Secretary Lujan said in his shopping center example last Wednesday, you either get a 50-year lease on that at one-half of 1 percent a month or 6 percent a year, or if you only get a 15-year contract, you have got to have the options to renew so you can amortize it out. Because the IRS says you have to amortize a building out over 40 or 50 years, so you cannot possibly do it to get enough revenues.

Senator BUMPERS. Mr. Maughan, you got the last word.

Senator WALLOP. Mr. Chairman, just before we close, there is a letter with an attachment from Senator Thurmond that we would like to put in the record.

Senator BUMPERS. Yes, that will be admitted to the record, and Senators will have 7 days in which to submit the questions in writing to any of the witnesses.

The hearing is adjourned.

[Whereupon, at 11:35 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

THE SECRETARY OF THE INTERIOR,
Washington, DC, October 23, 1990.

Hon. DALE BUMPERS,
Chairman, Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are responses to the questions submitted by Senator Wallop following the hearing on July 25, concerning concessions in the National Park System.

Sincerely,

MANUEL LUJAN.

Enclosure

ANSWERS TO QUESTIONS RESULTING FROM CONCESSIONAIRES HEARING HELD JULY 25, 1990 BEFORE THE SENATE ENERGY SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, OCTOBER 12, 1990

Question 1. How did you arrive at the decision that 22 percent would be an appropriate franchise fee?

Answer. The 22 percent figure is not a fixed figure, it is an example of an established return to the Government currently being used in the contract with TW Services at Yellowstone National Park. The Director of the National Park Service is exploring the development of a figure, with supporting analysis, which would have general validity for concession operations.

Question 2. Please provide all documentation supporting the 22 percent figure.

Answer. The National Park Service issued a prospectus for offers for the concessions opportunity at Yellowstone National Park. Eleven offers were received. The response received from TW Services included a proposal of a 22 percent set-aside plus a 5 percent profit cap. The National Park Service selected this as the best offer. Additional provisions of this contract are outlined in our answer to question number 51.

Question 3. Is the 22 percent taken from gross or net revenues?

Answer. The 22 percent return to the Government as described in the TW Services contract is based on percentage of gross revenues.

Question 4. Have you or your staff met with representatives of McDonald's Corporation?

Answer. Yes, both members of my staff and I have met with representatives of the McDonald's Corporation.

Question 5. What was the purpose of this meeting?

Answer. The purpose of the meeting was to determine from them how contracts were developed with them by other Government agencies, and how much revenue return agencies realize.

Question 6. Are you advocating placing McDonald's operations in parks, and if so, where?

Answer. We would be pleased to receive an offer from the McDonald's Corporation in response to any prospectus that we issue. However, at this time we have not specifically tried to recruit the McDonald's Corporation for any specific areas under National Park Service jurisdiction.

Question 7. What is the difference between the Yosemite Park and Curry Company and the Yosemite Natural History Association?

Answer. The Yosemite Park and Curry Company (YP&CCo.), is a concessioner of the National Park Service (NPS), which provides lodging, food, transportation, and many other services to visitors of Yosemite National Park. This for-profit corporation operates under a 30 year concession contract with the NPS.

The Yosemite Association (YA) is a non-profit cooperating association which operates under a cooperative agreement with the NPS. The Association aids and promotes the historical, scientific and educational activities of the NPS by making interpretive and educational materials available to park visitors through sale or free distribution. The Association also supports research, interpretation and conservation programs of the NPS through donations of funds, supplies and materials, in-kind services, and similar contributions. Association employees operate interpretive informational sales areas at park visitor contact stations and participate in museum and living history programs.

Basic authority for NPS contributions of manpower and logistical support for cooperating associations is contained in P.L. 79-633, "An Act to provide basic authority for the performance of certain functions and activities of the National Park Service," approved August 7, 1946, and further clarified in P.L. 230, approved August 8, 1953, and P.L. 91-383, approved August 18, 1970.

Ansel F. Hall, a park ranger, founded the Yosemite Museum Association to develop a museum and visitor contact station in Yosemite Valley in 1920. As the museum and visitation grew, the need for suitable free and sales interpretive literature increased. The logical vehicle to provide this service was the existing association, which was reorganized and expanded into the Yosemite Natural History Association (YA) in 1925 and incorporated in 1947.

Question 8. What specific services does the History Association provide that are already provided by the Curry Company?

Answer. The services of the YA and YP&CCo. overlap only in the sale of some interpretive material. Both sell interpretive materials such as maps, posters, postcards, trail guides, publications and videos.

Question 9. Does the History Association occupy government buildings?

Answer. Yes. See answer to Question #11 for list of facilities.

Question 10. If so, how much rent does the Association pay to the government? Where do the revenues go?

Answer. No rent is paid to the Federal Government for use of facilities. The NPS provides the Association sales, office and storage space. The NPS reserves the right to relocate or withdraw any facilities in order to meet the needs of the NPS upon reasonable notice; as well as the right to emergency access.

The NPS provides the Association with incidental utility services at each assigned sales facility, including water, electricity, heat, air conditioning (if applicable in the building) to the extent these utilities are required for the operation of the building. Solid waste disposal is provided the Association on a reimbursable basis.

Question 11. Please describe in detail the amount of space occupied and exact location of all Yosemite Natural History Association activities in Yosemite?

Answer. The National Park Service allows the History Association to use the following facilities, deemed necessary or desirable by the Service:

Sales and multipurpose locations: Bagby Station (2,000 sq. ft.), El Portal, for exclusive use for offices, visitor services, sales, and other administrative activities. Bagby Storage Building (1,500 sg. ft.), El Portal (built by YA for $60,896 in 1987 and donated to the Federal government) for exclusive use of storage, office, and other activities. Yosemite valley Visitor Center (1,200 sq. ft.) space provided for sales outlet, storage and authorized interpretive activities. Yosemite Museum lobby (250 sq. ft.) information and sales. Art Activity Center (300 sq. ft.), Yosemite valley for use cooperatively with the YP&CCo. Tuolumne Meadows Visitor Center (150 sq. ft.), space provided for sales outlet. Parsons Lodge (200 sq. ft.), exclusive use for sales, visitor services, and other activities, subject to the needs of the Service. Happy Isles Nature Center (250 sq. ft.), space provided for sales outlet. Big Oak Flat Information Station (1OO sq. ft.), use for sales outlet. Mariposa Grove Museum (100 sq. ft.), space provided for sales outlet. Wawona Pioneer History Center (100 sq. ft.) space provided for sales outlet and living history demonstrations. Some of the sites listed are available only during the summer season.

Miscellaneous: Ostrander Ski Hut, exclusive use during winter months as an overnight facility for skiers and non-exclusive use for visitor services and other activities during other times of the year.

Question 12. Please provide the committee with an exact accounting of all returns to the government by the Yosemite Natural History Association during the past five years, as well as the appropriate financial reports filed by the Association.

Answer.

1989	$279,867
1988	$220,835
1987	$453,070
1986	$189,728
1985	$152,433

These figures include collected donations.

See the attached copies of the Financial Statements and Independent Auditors' Report for the Yosemite Association.

(COMMITTEE NOTE: The attachment noted above has been retained in Subcommittee files.)

Question 13. Do employees of the Natural History Association occupy government or concession housing? If so, how much rent are they charged?

Answer. Yes. Some seasonal employees of the YA are housed in government quarters on an "as available" basis. As of August 17, 1990, twenty-five employees occupied government quarters. Charges varied depending upon the type of housing: tent, cabin, or hotel room. The total rent collected for the twenty-five YA employees currently is $1,049.12 every two weeks.

Question 14. What were the net receipts for the Association for each year during the past five years?

Answer.

1989	$358,657
1988	$220,183
1987	$230,320
1986	$24,840
1985	$84,478

See the attached copies of the Financial Statements and Independent Auditors' Report for the Yosemite Association.

Question 15. Does the Natural History Association or members thereof representing the organization participate in any political or lobbying activities? Please describe in detail.

Answer. Opinions, either favorable or in contradiction to the programs and policies of the NPS or other government agencies or private organizations, held by members, employees, or directors are encouraged to be expressed by the individuals concerned as private citizens and not through the Association. Any type of lobbying may jeopardize the Association's IRS tax-exempt status, therefore it is discouraged.

Question 16. How is the rent charged concessioners or occupants at Fort Mason in San Francisco determined?

Answer. The facilities at Lower Fort Mason encompass seven historic buildings and three pier structures. One of the pier buildings is utilized as a maintenance facility for Golden Gate National Recreation Area. One of the buildings is occupied by the J. Porter Shaw Maritime Library and collections storage of the new San Francisco Maritime National Historic Park. The remaining eight buildings and piers are under the administration of the Fort Mason Foundation, a non-profit organization operating under the auspices of a Cooperative Agreement. The rental rates are determined by comparing rates of other facilities, with similar Service/Performing Art groups within the San Francisco Bay area. The Fort Mason Foundation is to provide the lowest possible cost for public use space and to assist non-profit organizations in their efforts to provide activities at little or no cost to the public as defined in their Cooperative Agreement.

Question 17. Where do these revenues go?

Answer. The revenues used are to support cooperator management, operations, to provide routine maintenance, and to make capital improvements to the Government facilities it manages.

The Fort Mason Foundation supports and provides Grants to organizations who do not have the financial backing to provide their program activities. Commencing on October 1, 1984, and continuing for the term of the Cooperative Agreement, the Fort Mason Foundation agreed to set aside an amount equal to five (5) percent of "gross annual receipts" on all sales and business transacted on the premises. This amount is deposited into an interest bearing "Emergency Reserve Account".

Question 18. Please provide a complete list of occupants, rent charged and space occupied by concessioners and/or occupants at Fort Mason.

Answer.

Resident group	Monthly rent	Space occupied	Square feet
Ace Mailing	$121.41	Pier 1 North	171
African American Historical and Cultural Society.	$1,231.68	C–165	2,566
Blue Bear School of Music	$840.00	D–255 to 260	1,680
California Lawyers for the Arts.	$413.50	C–255 & 256	827
Arts Arbitration & Meditation Service.	$227.50	B–300	455
California Tomorrow	$732.00	C–355, B–345, & 1/2 of foyer.	1,464
City Celebration	$960.00	A-Loft	2,000
Cooks and Company	$100.00	B-Lobby	200
Earth Island Institute	$149.50	E–205	299
Environmental Traveling Companions.	$318.00	C–360 to 365, & C–310	636
Feedback Production	$448.50	C–200	897
Friends of the River Foundation.	$525.00	C–380 to 385	1,050
Friends of the San Francisco Public Library.	$885.60	D–265 & C–1	1,845
Funds for Animals	$187.50	C–262	375
Greenpeace	$1,358.00	E–265, 270A, 275, & 280.	2,716
Greens (Zen Center)	(1)	A-North	4,740
Magic Theatre	$5,440.32	D-3rd floor, & D–230	11,334
Marine Exchange	$923.00	B–310	1,300
Media Alliance	$1,173.00	D–270, 275, 280, & D–290.	2,346
Mexican Museum	$5,000.00	D–1st floor	10,000
Museo ItaloAmericano	$2,400.00	C–100, & 105	4,800
Oceanic Society	$1,770.50	E–210, 215, 220, 225, 230 A & B, 235, 240, 245, Foyer.	3,541
Life on the Water	$2,400.00	B–3rd Floor	5,000
Performing Arts Workshop	$308.50	C–265 to 270	617
Ploughshares Fund	$592.00	B–305, 330, & 1/2 of foyer.	1,184
Poetry Film Workshop/National Poetry Association.	$164.00	D–295	328
San Francisco Architectural Club.	$172.50	C–218	345
San Francisco Children's Art Center.	$332.50	C–170	665
San Francisco Community College Art College.	$8,314.48	B–1st & 2nd floors	19,336
San Francisco Craft and Folk Art Museum.	$1,219.68	A-North, A-Loft	2,772
San Francisco Folk Music Center.	$106.50	C–225	213
San Francisco Museum of Modern Art Rental Gallery.	$1,899.48	A-North, A-Loft	4,317
Western Public Radio	$1,054.00	D–210, 215, 220, 225, 230, foyer.	2,108
Yacht Racing Association	$291.50	E–255, & 290	583
Young Performers Theatre	$2,236.50	C–300, & 305	4,473

[1] Percent of revenues.

Question 19(a). Are the rents charged at Fort Mason equal to similar rent charged in other commercial enterprises along the waterfront? If not, why not?

Answer. No. The Fort Mason Center is a private, non-profit, tax exempt institution governed by a 21 member board of Directors consisting of eminent cultural and civic leaders and business professionals from a variety of backgrounds. The purpose of the Fort Mason Foundation is to administer the buildings and piers located in the

Lower Fort Mason area as low-cost public use space and to assist non profit organizations in their efforts to provide a broad range of cultural, educational, and recreational activities within these facilities at little or no cost to the public.

Question 19(b). What is the average rent per square foot in the Fort Mason complex?

Answer. The average rent is $.51 per square foot monthly rental for resident groups, and an average of 450 non-resident groups that utilize the facilities per year, 90 of which are non-profit.

Question 19(c). What is the average rent per square foot in similar complexes along the waterfront?

Answer. The San Francisco Port Commission's average rent of warehouse facilities along the waterfront are:

(a) $.25 per square foot per month for a clear/vacant warehouse. All tenants must provide their own interior building costs, utilities, janitorial service, etc.

(b) $.75 to $1.25 per square foot per month for warehouses with existing structures (e.g. office space, storage room/area) The rental cost is dependent upon location and views from windows and doors. True comparables in the rental market are practically non-existent. The age, physical and functional obsolescence, historic significance and restrictions resulting therefrom, market appeal, customer traffic, etc., etc. makes it extremely difficult to develop a valid market comparability analysis. Add to that, the removal of profit motive from the cooperator (resulting from our requirement to provide low-cost and/or no cost public use) and, it is accurate to state that a truly unique market condition has been established, for which there are no known direct comparables.

Question 20. Are cruise ships utilizing Glacier Bay National Park & Preserve under concession permits?

Answer. Cruise ships entering the park during June, July, and August are authorized by concession permits pursuant to PL 89-249. Vessels entering the park during the period September through May are authorized by commercial use license pursuant to 36 CFR 5.3.

Question 21. What are the fees paid to the government?

Answer. Cruise ships authorized by concession permits pay a franchise fee of $100 per entry. Those authorized by commercial use licenses pay an annual $75 processing fee.

Cruise ship companies are required to provide an interpretive program on board their ships while they sail in the bay. The program must be reviewed and approved by the NPS. As an alternative to providing their own program, the cruise lines can contract with the NPS for this service. NPS staff board the vessels as they enter the bay, provide the program, then disembark as the ships sail out of NPS waters. To date, all companies have elected to use the NPS interpretive program. Each company is billed for the exact service it receives. Therefore the charges differ between companies based on differential and overtime salary outlays, number of NPS staff assigned vessels, etc. The charges average $300 per cruise ship entry.

Question 22. Are these concession operations? If not, why are they under concessions?

Answer. Cruise ship companies advertise and sell their cruises as tours of southeast Alaska with special emphasis on sailings in Glacier Bay National Park & Preserve. These ships provide a viewing platform from which visitors may enjoy the splendors of the park. There is no doubt the cruise ship industry is a visitor service provider.

The two approved programs for authorizing commercial visitor services are the concession management program and the commercial use license program. At Glacier Bay a limit of 107 cruise ship entries is imposed during June, July, and August, although for the 1990 season, two additional entries were permitted because of special circumstances. The number of the 107 total entries allocated to each cruise ship company varies greatly (from four allocated to one company to 42 allocated to another) During these months the park receives its heaviest public visitation and demand for cruise ship entries exceeds the 107 limit. Cruise ship entries during the rest of the year are not in high demand, and no conflicts arise between companies scheduling off-season trips.

The NPS authorizes cruise ship entries during the peak visitation season under the authorities of the Concessions Policy Act. This Act allows for the competitive selection of cruise ship companies, thus encouraging continued quality service to the visitor at appropriate prices. In addition, as concessioners, the cruise lines gain the highest level of stability available from any NPS management program. Under four year permits, with a preference in renewal, the companies can actively market their cruises and make long range plans. Through the Concessions Policy Act, the NPS can manage the operations of these vessels on a day to day, vessel by vessel basis, necessary for the protection of the marine life.

From September through May, two cruise ships may enter the bay each and every day. To date, the demand for entries in the off-season has not exceeded this limit. Additionally, visitation is at its lowest level, thus further reducing pressure on the park environment. During this off-season, commercial use licenses are issued to any and all cruise ships meeting minimum standards. These licenses, however, provide no stability for the licensees. They are issued year-to-year and can be rescinded at any time. The NPS cannot set terns and conditions particular to each company under this program: all cruise ship licensees must operate under the same terms and conditions. The NPS is also limited in its authority to monitor quality and pricing of operations authorized by licenses.

The use of a concession permit/contract or a commercial use license is dictated by differing management needs. Licenses are appropriate in many situations and there is a significant number issued in the Alaska Region. However, as soon as adverse impacts occur requiring a reduction in the number of commercial service providers or in the level of services provided, then licenses will be rescinded and proposals solicited from the public for concession operations.

Question 23. What is the status of the Wawona Hotel in Yosemite National Park? Who owns it? Who maintains it? Who operates it?

Answer. The Wawona Hotel consists of seven buildings, a golf course, and a swimming pool. The buildings were constructed between 1867 and 1917. In 1932, the National Park Service purchased the Wawona Hotel with 8,800 acres of the Wawona Basin from the Washburn family. At the same time Yosemite Park and Curry Co. purchased the furniture and fixtures used in the hotel. Since that time YP & CCo. has operated the hotel in accordance with its concession contract, paying a building use fee to the government. The concessioner provides general maintenance and repairs with the responsibility for capital improvements remaining with the NPS, subject to the availability of funds.

Question 24. How much money would it cost the government to correct the deficiencies to bring the complex in compliance with all current codes to meet all of today's operational standards?

Answer. A thorough structural analysis of this National Historic Landmark needs to be completed. Without a current assessment of work, costs can only be estimated. The National Park Service's estimates range between three and six million dollars. Yosemite Park and Curry Company's estimates range between 4 and 9 million dollars.

Question 25. Describe in detail what work needs to be accomplished to meet the above mentioned standards.

Answer. Construction material for the Wawona Hotel buildings consists primarily of local pine milled on the site. The interior is lath and plaster. Observable foundations are of dry set natural stone, augmented over the years with concrete. Large timbers are part of the structural system and are used as piers in some areas. The major concern for these buildings results from deterioration of the structural integrity and water penetration damage.

Structural integrity: Natural movement and settling of the building continue to cause cracking in plaster walls and ceilings and sloping floors; foundations are not reinforced or secured; water damage persists; and dry rot and insect infestation is visible. Compliance with Uniform Building Code requirements for seismic code design and lateral load calculations would suggest installing new footings and metal connectors to tie individual supports together. Walls, roofing and flooring need to be engineered and supported. (Three to eight million dollars)

Mechanical Systems: Two new steam boilers, with associated equipment and piping, are needed to supply the Hotel, domestic hot water, and guest room space heating. Additionally architectural improvements to the structures, such as insulation, weather stripping, and storm windows, will be required to increase energy efficiency. (Approximately $500,000).

Electrical and Plumbing Systems: Existing electrical and plumbing systems will need to be upgraded to comply with current national codes. Cost estimates are unknown until preliminary review is complete.

Asbestos: Assessment and removal of asbestos from hotel complex; to include a comprehensive survey for risk assessment and notification of guests and employees of established work practices and maintenance programs to assure compliance with asbestos regulations. ($100,000)

Miscellaneous: Reconstruction of back dock service area, upgrade of fire alarm system, front fountain restoration, replacement of underground fuel storage tank with double walled tank, and replacement of cracked and broken walkways. (Approximately $300,000).

Question 26. Is the repair rehabilitation program for the Wawona Hotel on the Park priority list of funding? If so, what priority number is it? Please provide the same information for the regional and national list of priorities for Fiscal Years '90, '91, '92.

Answer. Yes. Priority numbers for Fiscal Years 1990, 1991 and 1992 are twenty-eight for the Park, failed to make the regional priority list, and forty-two on the national list.

Question 27. Would it be in the public's interest to grant the concessioner either possessory interest or ownership of the Hotel for fair market value for the concessions operation, repair, and maintenance of the complex?

Answer. Possibly. Yosemite Park and Curry Company offered to buy the Wawona complex from the National Park Service at its 1986 appraised value of $2,268,000. However, the variables are many and ever changing. The public's interest can best be served by ensuring the long term protection of the significant values of the Wawona Hotel complex. The National Park Service has demonstrated time and again its ability to manage, rehabilitate, and protect historic structures throughout the country. The selling or transferral of interest to another party only adds an additional layer. Reduced control, flexibility, and possibly a loss of historic values would occur under a management that was less than totally committed to the restoration and protection of the hotel or by its transferral to another interest or buyer.

Question 28. How long would it take the concessioner to accomplish all necessary work and repairs on the Hotel complex?

Answer. The hotel is owned by the government and it is responsible for any major investment. If the concessioner owned the building, YP & CCo. estimates that work could probably be completed in two to three years. However, with a new contract to be issued, work would be delayed until after 1993.

Question 29. In light of budgetary constraints, park, regional and national priority lists, how long would it take the Park Service to accomplish all necessary work and repairs on the Hotel complex.

Answer. An exact time frame hinges on the flexibility of funding that would be allowed to complete the necessary work. If the repairs were to become part of a new contract, repairs could be accomplished within agreed time limits of two to three years.

If a building use fee, with those funds remaining in the Park, were implemented; renovations would take longer and be dependent on the fee amount.

Question 30. Please identify the private sector professionals that you are going to recommend to assist the Park Service Concessions staff.

Answer. We expect to seek consulting firms with recognized nationwide expertise in the hospitality sector who can help us in analyzing the economic potential of an operation before we prepare the Statement of Requirements (The document which publishes the terms and conditions under which NPS will renew an old contract or award a new one) The selected consulting firm or firms will be the result of a solicitation process.

Question 31. Please identify the business skills that require upgrading for Park Service employees working in Concessions Management.

Answer. Our greatest emphasis will be on financial analysis, economic feasibility analysis, business law and negotiation techniques, but we will also be looking at improving industry-specific knowledge in such areas as hotel management, food service and retail operations.

Question 32. How will the upgrade of these skills improve Concessions Management Program?

Answer. The better our people understand the inner workings of the concessioner's business, the better they will be able to deal effectively with contract preparation and administration, sale of concessions, and related issues.

Question 33. What is your definition of a windfall profit?

Answer. A windfall profit is a profit that occurs suddenly as a result of an event not controlled by the person or company profiting from the event.

Question 34. Are you advocating government regulation of profits that can be generated by the private sector in parks? Should the government regulate profits? Why?

Answer. I am not advocating the regulation of concessioner's profits nor have I ever believed that the government should regulate profits. My reason for this position is very simple. The profit motive is the backbone of every business as it is the "American Way". At the same time however, I believe, that the government must know the extent of the concessioners profits because the franchise fee to the government must be based on the probable value of each concession contract. The law defines probable value as "the opportunity for net profit in relation to both gross receipts and capital invested".

Question 35. Who determines windfall profits from acceptable profits?

Answer. I have directed the Director, National Park Service to make such a determination during the review of proposed transfers of concession contracts. Should any proposed transfer result in windfall profits to the seller, it will not be approved.

Question 36. What specific legislation will you require to accomplish these new policies?

Answer. As I mentioned to you at the hearings, I am not proposing any legislation at this time. I would, however, like to reserve the option of proposing legislation if our continuing review of the concessions policy determines that legislation is needed.

Question 37. You state that the concessioners' profit should be approximately equal to the median returns exhibited by the similar industries. What constitutes a similar industry? Please identify a similar facility other than a park concession to that operated by Yosemite Park and Curry Company. Please identify a similar facility other than a park concession to that operated by TW Services at Scotty's Castle, and by Greyhound at Glacier National Park.

Answer. The assignation of specific concessioners to an appropriate "similar" industry has always been a difficult problem because of the unique nature of some of our concessioners and the services they provide. Our solution has been to identify one service as the primary basis of comparison, usually determined by the largest amount of sales or the greatest investment, and then comparing the concessioner's profits to the industry returns. We then make secondary comparisons on the basis of the smaller services. This is necessary because the lodges in the industry sample will usually have some food and merchandise sales but probably not as much as our lodging concessions and this could impact the conclusions drawn. The selections would be discussed with the concessioner and alternatives pursued, if desired, in any negotiations involved.

While there are undoubtedly some similar companies to Yosemite Park and Curry Company, TW Services at Scotty's Castle and Greyhound at Glacier National Park, it is not our intent to use them in any comparison of profits because such outside profitability information would not generally be available to the Service. Instead, we have used lodging as our primary service comparison for Yosemite Park and Curry Company and food service, souvenirs, and general merchandise as secondary comparisons. Glacier Park, Inc., (Greyhound) has lodging as a primary comparison and food service as a secondary comparison. Scotty's Castle has souvenir sales as a primary comparison and food service as a secondary comparison.

More weight is given to the primary rather than the secondary industry comparisons. Consideration is also given to the financial effect that secondary service sales would have on the concessioner's profitability ratios. For instance, a large amount of gasoline sales would tend to lower the return on gross receipts with respect to the lodging industry.

Question 38. The Chuck Williams family operates the Kettle Falls Hotel at Voyageurs National Park. What would be the effect of an increased franchise fee on this operation? What facility in the private sector is comparable to the Kettle Falls Hotel operation?

Answer. The Kettle Falls complex is a marginal concession operation which lends itself to an owner/operator type arrangement. The National Park Service purchased the facilities in 1977. A construction/rehabilitation program was initiated, and with the completion of the first two phases of construction, the U.S. Government has invested approximately $5 million in rehabilitation of the hotel and providing new lodging units and related facilities. Based on several factors, including the economics of the concession operation, the franchise fees have been waived for the concessioner during the last three years the contract has been in force. Also in 1989, the actual-cost utility fees were waived. While there is opportunity for the business to grow, primarily through increased occupancy rate, the owner/operator character of the business and the marginal profitability will not change.

While there are many resorts in northern Minnesota that have similar services and facilities to Kettle Falls, these resorts can be reached by motor vehicles, unlike the Kettle Falls operation. There are a few resorts in Canada that have only air or water access. For the most part, there are three things that set Kettle Falls apart from other resorts: (1) the remote location (water access), (2) the historic hotel as the primary guest facility, and (3) the Government investment in restoring the historic structures and providing new modern facilities.

Question 39. Please describe the tour boat operation conducted by Robert Hilke at the same park. What services does he provide? What would be the effect of an increased franchise fee on his operation? If he went out of business, who would provide the same services?

Answer. Voyageurs is a water-based park. With the early history of the park, the visitors either brought their own boat or rented from the local resorts. The emphasis was primarily on fishing. As visitation grew and other park values came into focus, the need for public transportation was recognized. In 1988 a concession prospectus was issued for Rainy Lake. Only one responsive bid was received. Voyageurs National Park Boat Tours, Inc. (Bob and Mary Hilke) now provide the tour boat services on both Rainy and Kabetogama lakes.

Bob and Mary Hilke are outstanding concessioners and strong supporters of the park. In order to enter into the concession contract on Rainy Lake, they made a considerable investment in a tour boat. They have not reached a break-even point with the Rainy Lake operation. A 20–25 percent increase in visitor use of the tour boat would be required to reach the break-even point. On the other hand, the Kabetogama Lake tour boat does meet the operational expenses although without a profit. This operation does not have the expense of a debt for a new boat.

Bob Hilke cannot keep subsidizing the operation.

From the park's standpoint, we need the boat (transportation service) regardless of who provides the service. The most desirable approach is to have the Hilkes continue with a concession contract. Their break-even deficit is about $25,000 based on last year's visitor use. If he is to remain in business, we will need an innovative approach to assure that he reaches the minimum operating income. This is contrary to most of our concession philosophies; but it is by far the best approach for the Government to get a needed service.

If the concessioner is unable to continue with his operation, we feel very strongly that the park needs to move into a Government transportation system, either Government owned/concession operated or Government owned/Government operated. This would represent a substantial capital expenditure on the part of the Government ranging from $200,000–$450,000 depending on whether we purchase two boats (Rainy and Kabetogama) or one boat.

Question 40. The Katmailand, Inc., company operates a concession in Alaska. What would be the effect of an increased franchise fee on this operation? What was the net/gross revenue for this facility last year?

Answer. The effect of an increase in franchise fee for Katmailand, Inc., the concessioner operating in Katmai National Park and Preserve would be a reduction in its net income. The gross receipts for calendar year 1989 were $786,669 with a net income of $124,559.

Question 41. You state, "We want to benefit from the initiative and expertise of the American Free Enterprise System." How do your proposals to limit profit and limit windfall profits interface with the American Free Enterprise System?

Answer. We are not out to limit profit, but rather to ensure a fair return to the American people for concessioner use of land and, sometimes, buildings which the people own and paid for with their tax dollars. When we see a concession sold at a price which is many times the value of the tangible assets, we can only conclude that the concessioner is selling the right to operate in the park, something he does not own.

Question 42. What is your definition for Concessions that are only marginally profitable? How much is "Marginally Profitable"?

Answer. When an operation falls well below industry norms in return on sales, equity or assets and our evaluations indicate no management shortcomings, we will conclude that the concession is marginal. Because of short seasons, remote locations, environmentally based restrictions on what the concessioner can do, plus the control we exercise over rates and service, there are always going to be some concessioners, especially small ones, who would be classified as marginal.

Question 43. Isn't it true that, by definition, using a median would stifle excellence in performance and encourage Concessioners to only perform at an average level? If not, please explain.

Answer. One of the reasons we seek to improve our financial analysis capability is so that we can improve our ability to differentiate between profits which result from good management and those which are the outgrowth of the concessioner's non-competitive situation. We don't want to penalize good management and think we can avoid doing so.

Question 44. Isn't it true that by regulating profits to a median, concessions would be encouraged to increase expenses and have little incentive for efficiency? If not, please explain.

Answer. Higher income tax brackets for the wealthy have not discouraged anybody from trying to get rich. Likewise, higher franchise fee brackets for the more lucrative concessioners will not stem their urge to do as well as possible. Doubtless, there will be more motivation for some "creative bookkeeping", but this is where, again, improved financial analysis will help.

Question 45. You have met with the Concessioners on a number of occasions to discuss some of the findings and ideas suggested. What was their response?

Answer. The concessioners' response has been pretty much the same as it was in their testimony before this committee. They are concerned. We want to reassure them, and you, that what we seek is balance, and a fair sharing of the revenues generated in our parks.

Question 46. What was the condition of the Curry Company operation and facilities prior to 1973 when MCA acquired the Company?

Answer. According to testimony given by Jay S. Stein, Chairman of the Board of Yosemite Park and Curry Company, on June 16, 1975 before the Conservation, Energy and Natural Resources Subcommittee of the House Government Operations Committee, "When we took over operation of the concession, the facilities were in a deplorable state of disrepair as our predecessors had not spent sufficient money on repairs or maintenance; and, in fact, during initial conversations with Park Service personnel, they welcomed our involvement as we indicated a willingness to spend the necessary money to adequately maintain facilities".

To the best of our knowledge no facility assessment was made by the NPS prior to 1973. In 1972 YP&CCo. parent organization, U.S. Natural Resources, was believed to be having financial difficulties.

Question 47. What is the condition of the Curry Company operation and facilities today?

Answer. Many of the structures date from the 1920's, are subject to considerable wear and tear due to heavy public demand, and consideration should be given to their replacement. Nevertheless, Yosemite Park and Curry Company continues to upgrade and maintain facilities to the satisfaction of the NPS. The need to replace outdated buildings, provide adequate parking, and meet infrastructure needs will be addressed in the next concession contract.

Question 48. How much money has MCA invested in capital improvements, repairs, and maintenance in Park facilities since 1973?

Answer.

1974	2.9	1980	1.1	1986	2.6
1975	2.2	1981	1.9	1987	4.4
1976	2.0	1982	2.9	1988	3.9
1977	1.5	1983	2.7	1989	6.5
1978	1.5	1984	2.8	1990 est	8.0
1979	2.1	1985	3.5	Total	53.0

NOTE: Above figures denote millions of dollars and are rounded off to the nearest $100,000.

Refer to attachment for more detailed information.

Question 49. How much money has the federal government invested in capital improvements, repairs and maintenance in these same facilities since 1973.

Answer. The following capital investment figures come from Congressional line item construction project appropriations that support concession operations; such as improvements to parking, roads, trails and utilities. See attached supplement. Dollar amounts from in-park capital improvements and line item capital investments for NPS facilities are not included.

Monies for large projects are spent over many years and do not fit nicely into yearly categories, therefore capital investments are grouped into five year periods of time. Total: $72,700,000.

1973 to 1977	20.0
1977 to 1982	6.6
1982 to 1986	30.6
1986 to 1990	14.5

NOTE: Above figures denote millions of dollars and are rounded off to the nearest $100,000.

Question 50. Were there other substantial capital contributions and/or significant allocations made for repairs and maintenance of Park facilities by MCA since 1973? Please describe in detail.

Answer. See YP&CCo.'s contribution supplement.

Question 51. Please describe in detail the differences between the Yellowstone (TW Services) and Yosemite (Curry Company) contracts.

Answer. Below is a summary of the most obvious points of differences between the two contracts. Also attached are detailed descriptions of each of the contracts.

Yosemite (Curry Company)	Yellowstone (TW Services)
Starting Date: Oct. 1963.	Starting Date: Nov. 1981.
Franchise Fee: Concessioner is required to pay a fee of 3/4 of 1 percent of the gross receipts plus a building use fee of $19,271.	Capital Improvement & Maintenance Program: Concessioner is required to pay 22 percent of the gross revenue into a capital improvement and repair and maintenance fund. This is the fee to the United States and is used for repairs and upgrading of the Government owned buildings operated by the concessioner.
Building Prog.: Concessioner was required to spend not less than $2,000,000 on specified facilities.	Concessioner was required to advance $7,400,000 to build facilities at Grant Village. The pay back is to come from the 22 percent capital improvement program. The pay back is 10 percent of the total each year for 10 years plus an annual investment charge of not less than 12 percent on the unrecovered improvement costs.
Possessory Interest: Described as sound value in all concession improvements.	Only granted in the facilities mentioned above at Grant Village and then only book value in the unamortized portion.
Profit Limitation: None.	Concessioner is limited to a net profit before taxes of 5 percent of gross receipts.
Property: Primarily owned by the concessioner.	Primarily owned by the U.S. Government.

Question 52. Should the Park Service grant possessory interest to Concession operations? If not, why not?

Answer. Definitely, the Service should grant possessory interest. Concessioners are entitled to protection of their investment and, where borrowing is necessary, they need to be able to show the bank that the loan is secured. The question is not if possessory interest should be granted, but rather how it should be valued. We believe that book value compensation is sufficient, will not slow concessioner investment, and gives the Service much more opportunity to get competitive offers at renewal time.

Question 53. Eliminating the top IS concessioners operating in the Parks, what is the average net earning for the remaining concessions for last year?

Answer. Using 1988 financial information and eliminating the top 15 concessioners, the average net income for the remaining concessioners was $32,545.

Question 54. Does the concessioner in Yellowstone pay property taxes?

Answer. Not on real property

Question 55. Does the concessioner in Yosemite pay property taxes? How much?

Answer. Yes, Yosemite Park and Curry Company pays taxes like all businesses which have ownership interests in real and personal property. The concessioner incurred a property tax obligation of approximately $340,000 in 1989.

Question 56. Who owns the facilities in Yellowstone?

Answer.

1. Hamilton Stores, Incorporated, has possessory interest in their facilities in the park.

2. The facilities operated by TW Recreational Services, Incorporated, are owned by the United States Government with the exception of facilities built in the Grant Village area of Yellowstone. In 1983, this concessioner advanced the Government

money to construct these facilities. The advance is being paid back to the concessioner over ten years.

3. The facilities operated by Yellowstone Park Service Stations are owned by the United States Government and Hamilton Stores, Incorporated, each having a 50 percent interest. This resulted from the Government buy-out of the Yellowstone Park Company. The service Stations were previously co-owned by Hamilton Stores and the Yellowstone Park Company.

4. The Government owns the hospital and a clinic which are operated under a concession contract with Yellowstone Medical Services. This concessioner owns an additional clinic trailer.

Question 57. How much did the Government pay for the Yellowstone facilities?

Answer. $19.9 million

Question 58. Since the change in ownership at Yellowstone, has the new arrangement provided any payments to the National Park Service or to the Federal Government in general?

Answer. No payments have been made directly to the National Park Service or the Federal Government. Twenty-two percent of TW Recreational Services' gross revenue has gone to the renovation of Government-owned facilities.

Question 59. What companies are included in the Dun and Bradstreet industry norms?

Answer. Dun and Bradstreet's Industry Norms & Key Business Ratios is an annual publication of the summary statistics of over one million financial statements broken down into over 800 different lines of business (see attachment) as defined by the U.S. Standard Industrial Classification (SIC) code system. These industries are further broken down by asset size. For example, there are over 1,900 different lodging concerns in the 1989–90 edition (1988 fiscal year). The actual use of this publication was recommended by an independent contractor studying franchise fees in 1981 specifically because of the sample sizes. We do not know the names of the individual companies which make up the sample.

Question 60. Do the companies in the D & B norm which you use only operate hotels, or do they also collect franchise and royalty fees and have other businesses which are not comparable to park concessions operation?

Answer. The companies in the Dun and Bradstreet lodging data base (SIC 7011) undoubtedly run the spectrum of operational and financial structures. However, the size of the sample and the use of median statistics minimize the effect of unusual or "outlier" operations. It is not our intention to require that all the operations identically match concession operations when we use these statistics. No such match would be possible in any database. However, these statistics do provide the returns of lodges operating outside of areas administered by the NPS and, as such, can be used as a standard in measuring the expected profitability of similar investment opportunities. Of course, these statistics must be used in conjunction with other pertinent information and take into account the individual circumstances of the concession operation.

Question 61. Do the companies in the D & B norms have the same financial structure as national park concessioners?

Answer. As noted in our response to question 60, above, the full spectrum of financial structures are probably included in the Dun and Bradstreet database. To counteract this, we use three different profitability ratios that are each affected differently by financial structure. We also make adjustments, as necessary, to concessioner reported statistics so as to ensure that we have a fair and meaningful comparison.

Question 62. If you owned an apartment building for 20 years so that it had a book value of zero, and the government condemned it for a highway project, would book value be fair compensation?

Answer. Under the situation described above, book value compensation would be very unfair. However, if the same apartment building was constructed on land owned by another person or corporation and leased under a 20 year lease arrangement with the owner of the land and the terms and conditions were acceptable to both parties, book value compensation, if it was zero, would be fair compensation.

Question 63. In your statement, you make no mention of need for legislative change. I believe you have been quoted last week in your press conference as calling for legislative action on the areas of possessory interest and preferential rights. Earlier, in testimony before the House Committee you said change was not needed. Can you tell this Committee what is your position on the need for legislative change?

Answer. As I mentioned to you at the hearings, I am not proposing any legislation at this time. I would, however, like to reserve the option of proposing legislation if our continuing review of the concessions policy determines that legislation is needed.

Question 64. You served as a distinguished member of the House Interior Committee for some 20 years. During that period, the concessions system was reviewed a number of times under the leadership of Chairman Mo Udall and others. During your service on that committee, did you find the concessions system was not working well and need change?

Answer. During the period I served as a member of the House Interior Committee, issues concerning the National Park Service Concessions Program were addressed and I am aware of some significant changes that were made to the Concessions Program. Some of them include the development of a Concessioner Review Program that improves the National Park Service's evaluation of a concessioner's performance as well as a Concessioner Rate Approval Program which was designed to assure that rates concessioners charge park visitors are comparable to rates outside of a park.

The issues of today are different. The programs which affect service to the visitor are in good shape. It is appropriate, now, to look more closely at return to the Government.

Question 65. Is the franchise fee under your proposal going to the Treasury? If the answer to the question is no, please describe in detail how the revenue will be utilized.

Answer. Under my proposal, I envision an overall "Return to the Government" which will be made up of several identifiable items. One of these items will be franchise fees and these revenues will continue to be deposited in the U. S. Treasury. Other in lieu of franchise fee items such as extra-ordinary maintenance will be utilized in keeping the facilities properly maintained.

Question 66. How much money do you expect to generate under your proposed new policies over a five-year period?

Answer. We have not performed any projections of numbers at this point and will not be able to until policies are refined to a much greater detail. However, this program may not generate substantial additional monies but I would expect that the value to the Government would increase because of the improvements and renovations concessioners will perform.

Question 67. In the Concessions Policy Act of 1965, Congress set forth explicit directives regarding the "possessory interest" that concessioners would enjoy in any "structures, fixtures or improvements" they make in our national parks. Although the U. S. Government holds legal title to these structural improvements the law provides concessioners with some guarantee that any investment made in the park will not be subject to a Government "taking" absent just compensation. Without this statutory promise, do you believe the concessioners can realistically be expected to continue to maintain and improve the park facilities that are enjoyed by millions of Americans each year?

Answer. We do not propose changing possessory interest as described in the Concessions Policy Act. As discussed above, the valuation of possessory interest may be adjusted.

Question 68. If you are generally happy with the current National Park concessioners, why do you want to dramatically change the system of concession regulation which has functioned so well for decades?

Answer. We want to continue with the better points of the National Park Service Concessions Program which are Service to the Public and Resource Protection. But we want to get more money for the United States which we feel is reasonable in today's business climate. When I look at Yosemite National Park it is evident we need to do better in situations like that.

Question 69. On what basis do you believe that profits should be regulated since the law focuses on regulation of revenues?

Answer. According to the law, franchise fees however stated shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit.

Probable value can only be determined through a proper review of the profits and would indicate to us that part of these profits should be shared by the United States Government.

Question 70. Do you believe in our free enterprise system and do you believe it has worked well in providing commercial services to the public?

Answer. I certainly do believe in the free enterprise system. However, park concessioners can hardly be compared to the free enterprise system as normal businesses, since they are protected from competition and in some cases subsidized by the United States.

Question 71. Are you aware of indices commonly used to measure profitability within the hotel industry?

Answer. We are aware of the indices commonly used to measure profitability within the hotel industry. They usually center on profits before fixed charges such as interest, depreciation, rent, and insurance and are particularly useful as a supplemental measure. Some of the problems with their exclusive or primary use are that they do not represent probable value as defined by the law and are not useful for businesses who have significant income from other services such as souvenir, marina, transportation and gasoline sales.

Question 72. Are there other accepted measurement barometers within the industry besides Dun & Bradstreet's industry information which should be evaluated as more accurate comparisons to national park concession operations? What are some of these?

Answer. Attached is a bibliography published with our franchise fee system. We do not believe that any of these are more accurate, per se, but rather are useful as supplemental information. Each database has its own strengths and weaknesses (see questions 98 and 99). Please note that lodging is only one of the concessioner industries and we must be consistent from industry to industry.

Question 73. Does Public Law 89-249 authorize you to regulate all revenues and pricing within National Parks?

Answer. Public Law 89-249 authorizes the National Park Service to regulate all rates charged in the park. The required basis is ". . . by comparison with those current for facilities and services of comparable character . . ." outside the park. NPS does not regulate revenues, although it prescribes the kinds and quantities of services concessioners may provide, which obviously affects the concessioner's ability to maximize revenue.

Question 74. Has the system of pricing regulation been effectively administered by the National Park Service?

Answer. We are very pleased with the effectiveness of our Rate Administration Program. Complaints are rare. Our process is understandable, objective, and allows not only for appeals by the concessioner, but for concessioner input in the selection of outside the park businesses as "comparable."

Question 75. Are there services being provided in the National Parks which have not been authorized by the National Park Service or for which the National Park Service has not approved the pricing?

Answer. Except for businesses located within inholdings, we are aware of no services being provided without NPS authorization. We would take appropriate legal action to close down any such operation. The concept which underlies the rate approval authority in PL 89-249 is that the concessioner enjoys a full or partial monopoly and that rates must therefore be regulated to avoid abuse. We authorize some minor operations under a Commercial Use License (CUL) and do not regulate their rates. We do not limit the number of CUL's which can be issued at a park, so there will be enough operators that normal marketplace competition will hold prices down. A typical CUL might be one which allows a nearby dude ranch to bring their guests onto park riding trails.

Question 76. Given that National Park visitation continues to climb every year, doesn't this reflect that people still believe the National Parks are a good value for their recreation budget?

Answer. We certainly hope that people believe the National Parks are a good value. We think so. A point to remember is that demand far exceeds capacity in many of our more popular parks. If we did not control rates, concessioners would be free to charge a great deal more for their services and still be filled to capacity, but middle America would be shut out.

Question 77. I understand the National Park Service has initiated a holding action on all contracts pending a review by your office and the implementation of new policy positions or contracting procedures. How long has the holding action been in effect and how many contracts are affected by this action.

Answer. The temporary suspension on contract actions was placed in effect on January 26, 1990. As of August 22, 1990, there were 49 actions affected by the suspension.

Question 78. Are these contracts up for renewal whereby existing operations have a preference or are they contracts whereby everyone competes on an equal basis?

Answer. Both renewal contracts and new concession opportunities have been affected by the temporary suspension. However, as very few new concession opportunities are identified each year, the majority of actions suspended are renewals of existing contracts.

Question 79. How long is this expected to continue and once decisions are made to change a policy position or a contracting procedure, can this be accomplished immediately or does this require additional delays?

Answer. We expect to continue the temporary suspension in the short term, although contracts that generally achieve our proposed policy objectives will continue to be processed. We are presently developing a time frame for implementing the proposed policy changes, and are not certain if there will be further delays once the policies have been adopted.

Question 80. How many concessioners are now operating without a current authorization? Is this a problem?

Answer. There are 61 expired concession authorizations at this time. This has not presented a serious problem because most concessioners have been willing to continue operating under the terms of their expired authorizations.

Question 81. Is it fair to assume the Government is losing revenues as a result of these delays? If so, how much?

Answer. We do not feel that it is fair to assume the Government is losing revenues as a result of these delays. While there may appear to be some short-term losses, we feel that these will be more than offset by the long-term gains that will result from the proposed policy changes.

Question 82. Contracts are being held up pending possible changes some of which represent major contract alterations which included possessory interest, right of renewal, shorter contracts and higher fees. These policy changes would appear to provide (1) less incentives for private enterprise to make investments; and (2) less protection for concessioner investment.

Answer. The proposed policy changes are intended to decrease the Government's contingent liability and assure that return to the Government is given adequate consideration in the award of concession contracts. While these changes may provide less protection of concessioner investment in some instances, we do not feel that this will necessarily result in less incentives for private enterprise investment if the policies are properly applied.

Question 83. These issues suggest that the overall impact of such changes would result in fewer benefits to the National Park Service and visitors. With those conditions coming into play, private enterprise may well expect to reap its profits quickly due to an uncertain future. What impact might this have on franchise fees? What impact might this have on visitor services and providing a park experience?

Answer. We do not feel that the overall impact of our proposed policy changes will result in fewer benefits to the National Park Service and visitors. Our policies will be based on the following principles:

—Protect park natural and historic resources, above all other goals;

—Provide quality visitor services at reasonable cost;

—Provide concessioners with a reasonable opportunity for profit;

—Provide for a fair return on fees, investments and services to the Government; and

—Promote competition in concession contracting.

As the application of our policies will be based on these principles, we do not foresee any impact on visitor services or the park experience.

Question 84. The National Park Service, and, indeed, the Congress has long endorsed the idea that serving park visitors requires special care and attention and requires a cooperative relationship rather than a competitive relationship. Is it more important to maximize franchise fees, eliminate possessory interest, and eliminate right of renewal than to have an operator providing services during the slack season or requiring an operator to provide marginally profitable lines of service supported by the more profitable aspects of the operation?

Answer. We are not proposing maximizing franchise fees or eliminating possessory interest and right of renewal. Each operation must be analyzed individually to determine its revenue and profit generation capability. This effort will be guided by the five principles cited in answer to question number 83.

Question 85. Is the National Park Service in a position today whereby policy decisions are driven by the amount of revenue that can be generated? Certainly there are instances where revenue from concessioners can and should be increased but are dramatic changes needed whereby incentives for investing in visitor services are reduced? Has there been a detailed review on the effect of these changes on revenue to the Government and services to the public?

Answer. It has not been our intention to have any policies dictated by the amount of revenue that can be derived by the United States. This is reflected in the five principles that I have directed the National Park Service to follow. We do think changes are necessary in order to put us on an equal footing with concessioners. We just want to increase fees to a reasonable amount, thereby being fair to both parties. Our staff is putting together a plan whereby we will be able to review the effects of revenue changes to the Government as well as service to the public.

Question 86. What would be the effect of these changes on the ability of the National Park Service to secure private investment when needed?

Answer. We feel that nothing would change our ability to continue to offer reasonable opportunities for people to perform valuable services within the parks.

Question 87. Is this a mechanism to avoid the appropriation process?Just as important, how does this impact franchise fees and the amount of revenue flowing to the Government? In other words, would revenue to the Treasury be reduced in the interest of retaining funds at the park level?

Answer. It is not our intention nor is this a mechanism to avoid the appropriation process. The only impact that we feel that this would have would be to increase revenues flowing to the Government. We have always tried to utilize revenues paid by park visitors to maintain and improve visitor facilities, and we only want to continue in this process.

Question 88. There have been several articles lately regarding what some may call over development of commercial activities in certain parks. Having what could be a large amount of discretionary money available in the park could well be counterproductive to the National Park Service planning process; not to mention the pressures on the park manager to spend these funds for the benefit of the concessioner. Has the National Park Service considered the cost/benefits of such a program and how it would be administered?

Answer. We do not plan to have a program whereby large amounts of discretionary monies are made available to anyone. If in fact money is available, proper controls would be installed to insure proper use of such money. We have given consideration to the cost benefit of such a program and will continue to study its implication as policies are developed.

Question 89. The Report of the Inspector General (IG) indicated there may be a legal issue with so called set-aside accounts. Another Report issued by the IG somewhere around 1986 addressed the same issue. What were the recommendations at that time?

Answer. The April 1990 office of Inspector General report indicated that there may be a legal question concerning payment of interest to a concessioner who advances money to a set aside account. This report also questioned whether or not certain improvements constructed with special account monies met the criteria of Public Law 87-608. In March 1986, an Office of Inspector General report was issued which recommended that the National Park Service eliminate special funding provisions from concession contracts. That report did not raise any legal questions with regard to the set aside accounts, but identified perceived deficiencies in the Service's administration of the accounts as the basis for the recommendation.

Question 90. The Department's position is that the Government should receive 20-22 percent of gross receipts in some form or another, some of which could be franchise fee, some of which may be the value of the improvements to be made, some of which could be the value of maintaining National Park Service facilities, and include a building use fee. What other types of expenditures by a concessioner would be applicable to the 20-22 percent rule?

Answer. As stated earlier, the 22 percent figure is not a fixed goal and I have requested the Director of the National Park Service to develop a figure with supporting analysis that would have general validity to concession operations.

Question 91. It is my understanding that the Department's position on right of renewal would substantially alter the current system. Currently a concessioner who has operated satisfactorily over the term of its contract is entitled to a preference in the renewal of its contract. If this is made discretionary, as it has been suggested, how will this work and what is the rationale for such a change?

Answer. Under the present implementation, right of preference in renewal is defined as a right of first refusal. In the event a better offer is received, the concessioner has the right to obtain the contract by matching the terms and conditions of the better offer. We are considering several options on how this right could be applied that would provide for more competition in the renewal process. For example, one option would be to define the right as a tie-breaker, rather than a right of first refusal. Another would be to assign a point value to the right for use in the evaluation of offers. However, much research and review of this issue remains to be done before any change in the current implementation is effected. Additionally, the current implementation has been established by regulation, and any proposed changes will be established through the rulemaking process, with appropriate public involvement.

Question 92. Would this be applied to the renewal of all concession authorization?

Answer. Any new implementation of the right of first refusal would be applied to all concession authorizations.

Question 93. Isn't the right of renewal subject to satisfactory performance under the current system? Isn't this requirement a substantial incentive to good performance? If not, please explain.

Answer. The right of preference in renewal is subject to satisfactory performance pursuant to the provisions of the Concessions Policy Act. This requirement, coupled with the present evaluation procedures established under the Concessioner Review Program have provided a substantial incentive to good performance. We do not anticipate that this would change as a result of our decision to consider changing our implementation of this right.

Question 94. Isn't it true that the continuity of service to the public is encouraged by the preferential right of renewal and the employees and management are more easily retained for continue service? If not, please explain.

Answer. Continuity of service to the public is not necessarily encouraged by the preferential right of renewal as concession contracts and permits are frequently transferred by their owners to new operators who have offered the highest price for the concession operation.

Question 95. Developers investing in a comparable facility outside the park enjoy appreciation from its property and that under your proposed denial of possessory interest that possibility would be denied to an investor in the park? Would not that in fact drive out good investors in favor of marginal ones? If not, please explain.

Answer. No. We expect to offer attractive, financial feasible packages to our prospective concessioners.

Question 96. There is currently one concessioner paying 22 percent. Please describe, in detail, the amount and type of capital investment made in the park since the inception of the contract.

Answer. TW Recreational Services in Yellowstone pays 22 percent of their previous year's gross revenue into a Capital Improvement and Maintenance Program to renovate and upgrade facilities owned by the Government and assigned by contract to them. This 22 percent Capital Improvement Program is in lieu of franchise fees and of Building Use Fees for the $50 plus million in government-owned assets.

We are enclosing copies of TW Recreational Services' Capital Improvement and Maintenance Program expenditures from 1980 through 1989.

We have also enclosed a copy of Exhibit A from the TW Recreational Services' contract which details projects to be completed out of the capital improvement program.

Question 97. What type and amount of capital investment do you expect from Concessioners once their franchise fees are raised to 22 percent?

Answer. We aren't going to raise franchise fees to 22 percent. That figure was presented as an example, not a target. We will do a business by business analysis of these operations to see what is possible, for both parties, taking full account of investment requirements and our obligation to give the concessioner a reasonable opportunity for profit.

Question 98. The National Park Service guidelines providing only for use of Dun & Bradstreet data instead of a wider index may be inappropriate. What are the differences in the data, type of data used, and surveys conducted by Dun & Bradstreet and Pannell, Kerr Forster (PKF) in establishing an "industry median"?

Answer. As discussed above, in response to questions 71 and 72, we normally use other statistics besides Dun and Bradstreet as a supplement to their ratios. We do not believe these other statistics to be "wider" in that they use smaller sample sizes and are usually industry specific. PKF's statistics concentrate on operational aspects of lodges and provide breakdowns for comparison of expenses as well as providing comparison within similar geographical area, lodge sizes and room rates that is especially useful for lodge operators. Dun and Bradstreet, on the other hand, presents traditional financial statistics and concentrates on "bottom line" profits as a measure of profitability. It utilizes a financial statement analysis which would be of interest to an investor or lender. As such, we believe that the Dun and Bradstreet statistics are more suited to a profitability analysis with operational statistics as a supplemental tool for better understanding.

Question 99. Would there be an advantage to the government in utilizing the PKF surveys to establish an "industry median"? If not, why not? If yes or maybe, please explain.

Answer. The use of PKF statistics to develop an "industry median" for franchise fee purposes would be extremely awkward, if possible. The following problems are known to exist:

—PKF provides statistics only for lodging type businesses leaving most NPS concessioners without industry standards.

—PKF statistics would not readily compare with lodging concessioners who have significant sales from other services lines such as merchandise, souvenir, gasoline, transportation and marina. These additional services would distort conclusions from operational statistics and may favor certain operations over others.

—PKF statistics would not readily compare with seasonal operations who need higher departmental profits to pay off fixed costs in a short operating period such as 3 months. Bottom line statistics, such as those provided by Dun and Bradstreet, would be more beneficial in this regard.

—PKF does not provide data on equity, investment, or other balance sheet figures that are fundamental to the probable value approach specified by P.L. 89-249.

—Our independent contractor who studied the franchise fee system in 1981 indicated that businesses have too much discretion over the designation of departmental or operating expenses and this could result in manipulation and disputes with the NPS. As noted, previously, PKF specializes in such an operational approach.

Question 100. What is the Yosemite Institute? What services do they supply to the park and the park visitor? Is the Institute under a concession contract?

Answer. Yosemite Institute is a non-profit, non-advocacy educational organization which was established in Yosemite National Park in 1971. Yosemite Institute is part of Yosemite National Institutes which includes Headlands Institute in Golden Gate National Recreation Area, and Olympic Park Institute in Olympic National Park in Washington.

Yosemite Institute provides residential educational opportunities as an outdoor science school for students all over the United States, particularly California. School groups spend up to five days in the Park studying local natural history, general ecology, and the role of natural parks and wild areas in the global environment. In addition to the residential field science programs the Institute provides adult education, teacher In-service Workshops, curriculum development, educational seminars, in Park back-up interpretive activities and emergency operation assistance.

The Yosemite Institute is not under a concessions contract. The institute has a Cooperative Agreement with the National Park Service which runs to May 2005.

YOSEMITE PARK AND CURRY COMPANY
CAPTIAL INVESTMENTS

IMPROVEMENTS TO GUEST FACILITIES

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$1,402	$1,102	$2,172	$1,769	$1,919	$2,361	$10,729

IMPROVEMENTS TO SUPPORT FACILITIES

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$1,619	$854	$775	$600	$968	$958	$5,774

RESTORATION OF HISTORIC STRUCTURES

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$209	$128	$722	$747	$3,120	$3,709	$8,635

SAFETY/ENVIRONMENTAL IMPROVEMENTS

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$19	$63	$593	$394	$128	$445	$1,642

TRANSPORTATION EQUIPMENT

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$297	$488	$135	$435	$402	$527	$2,284

TOTAL

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$3,546	$2,635	$4,401	$3,945	$6,537	$8,000	$29,064

* Above figures denote thousands of dollars

YOSEMITE NATIONAL PARK CAPITAL IMPROVEMEMTS SINCE 1973

YEAR	ACCOUNT NUMBER	ACCOUNT NAME	AUTHORIZED AMOUNT
1973 - 1978	7002	Y.V. SEWAGE	$336,000
1973 - 1978	7008	SIERRA CAMPS SEWAGE SYSTEMS	$85,000
1973 - 1978	7009	SIERRA CAMP TRAILS	$74,000
1973 - 1978	7010	YOSEMITE LODGE ELECT. SYS.	$100,000
1973 - 1978	7033	VERNAL FALLS SEWAGE SYSTEM	$1,000,000
1973 - 1978	7019	HIGH SIERRA TRAILS	$84,000
1973 - 1978	7015	Y.V. CORRALS PARKING/ROADS	$500,000
1973 - 1978	7029	Y.V. WATER SYSTEM	$2,000,000
1978 - 1982	7032	RECONST. Y.V. SEWER SYSTEM	$2,500,000
1973 - 1978	7034	WHITE WOLF SEWER SYSTEM	$523,000
1973 - 1978	7036	HOUSEKEEPING UTILITY EXTENTION	$500,000
1978 - 1982	7043	TUOLUMNE OXIDATION POUNDS	NOT AVAILABLE
1973 - 1978	7044	E.P. SEWAGE PLANT	$6,500,000
1973 - 1978	7046	INTERM WATER DISPOSAL	$300,000
1973 - 1978	7048	SEWAGE TRUNK SYSTEM	$6,100,000
1973 - 1978	7049	C.V. FIRE SYSTEM	$100,000
1973 - 1978	7050	REFUSE BIN BEAR PROOFING	$30,000
1973 - 1978	7999	RESURFACE BAGDER PASS	$55,000
1978 - 1982	7055	REROOF WAWONA HOTEL	NOT AVAILABLE
1973 - 1978	7057	BADGER PASS INTERM SEWER	$112,000
1973 - 1978	7060	Y.V. COMFORT FACILITY	$800,000
1973 - 1978	7061	SEWER REPAIRS	$1,700,000
1978 - 1982	7065	SHUTTLEBUSES	$1,800,000
1978 - 1982	7066	WAWONA HOTEL FIRE PROTECTION	$2,300,000
1978 - 1982	7067	LAUNDRY ELECTRIC SYS	$23,000
1982 - 1986	7069	AFFLUENT TREATMENT SYSTEM	$5,700,000
1982 - 1986	7091	WAWONA WASTE WATER TREATMENT	$8,700,000
1982 - 1986	7092	Y.V. WATER SYSTEM	$178,000
1982 - 1986	7093	WATER SYSTEM DAY LABOR	$209,000
1982 - 1986	7097	WAWONA WATER SYSTEM	$7,700,000
1982 - 1986	7098	Y.V. WATER SYSTEM	$8,100,000
1986 - 1990	7099	COURT BUILDING	$146,000
1986 - 1990	7101	ELECTRICAL SYSTEM REHAB.	$4,800,000
1986 - 1990	7105	GLACIER POINT PARKING	$1,100,000
1986 - 1990	7106	ELECTRICAL SYSTEM PHASE III	$3,200,000
1986 - 1990	7108	WAWONA WATER AND SEWAGE	$157,000
1986 - 1990	7109	WELL CLEAN-UP	$11,000
1986 - 1990	7110	WAWONA WATER SYSTEM	$31,000
1986 - 1990	7111	WASTE DISPOSAL	$300,000
1986 - 1990	7112	ELECTRICAL SYSTEM PHASE IV	$3,300,000
1986 - 1990	7115	REHAB. VALLEY ELECTRIC	$52,000
1986 - 1990	7117	ELECTRICAL SYSTEM PHASE IV	$1,000,000
1986 - 1990	7119	PAVING/SEWAGE LINES	$200,000
1986 - 1990	7118	GENERATOR PHASE IV	$70,000
1986 - 1990	7120	REHAB. GLACIER POINT	$130,000
1986 - 1990	7100	TRAFFIC SAFETY IMPROVMENTS	$69,000
		TOTAL:	$72,675,000
		1973 - 1977 TOTAL:	$20,899,000
		1977 - 1982 TOTAL:	$6,623,000
		1982 - 1986 TOTAL:	$30,587,000
		1986 - 1990 TOTAL:	$14,566,000

- Donated funds for construction of a bike path bridge spanning Yosemite Creek.
- Donation of equipment to aid in the preservation of the Peregrine falcon.
- Paid for labor and coordination efforts to eradicate exotic plant species and revegetate portio of Yosemite Valley.
- Removal of obsolete structures and 300 wood-burning stoves to improve air quality.
- Clean-up of dozens of backcountry sites.
- Installation of bear-proof garbage cans.
- Complimentary radio and T.V. transmissions to the community.

YOSEMITE PARK AND CURRY CO.
CONTRIBUTIONS

	1989	July 1990 YTD
Park Support		
Yosemite Association	$300	$3,000
Yosemite Institute	2,100	2,000
Yosemite Fund	9,200	550
Yosemite Guide	40,000	19,000
YCC	13,000	7,800
Student Conservation Association		5,000
Sousson Foundation	3,000	15,000
Ski Patrol	600	
Yosemite Renaissance	3,500	4,500
Centennial Celebration	1,000	25,000
Indian Days		1,500
Environmental Support		
Sierra Club	500	500
Earth Island Institute	200	500
Friends of the River	200	100
Mono Lake Committee	1,700	1,800
National Audubon Society	400	500
National Parks & Conservation Association	1,200	
Elimination of Styrofoam products	30,000	17,500
Plastics and Styro Groups	4,000	
Miscellaneous gifts	2,300	2,300
Community Support		
Fire Brigade	2,000	1,200
TV and Radio Reception	2,400	1,400
Recreation Activities	144,000	87,000
Clubs - Winter Club, Lions, Scouts, Ski Team	12,500	700
Schools and Childcare	58,000	32,000
Agency Discount	25,000	15,000
Foresta Fire Relief Fund		25,000
Recycling Program	68,000	86,000

The following capital, and repair and maintenance contributions were made by TP&CO.

Year	Capital Improvements	Repair & Maintenance	Environmental Remediation	Total
1974	$2,954	$1,221		$4,175
1975	2,230	1,435		3,665
1976	2,043	1,532		3,575
1977	1,525	1,667		3,192
1978	1,533	2,178		3,711
1979	2,199	2,722		4,921
1980	1,082	3,033		4,115
1981	1,923	3,183		5,106
1982	2,919	3,654		6,573
1983	2,710	4,019		6,729
1984	2,778	4,464		7,242
1985	3,546	4,840		8,386
1986	2,635	4,622	$180	7,437
1987	4,401	4,757	417	9,575
1988	3,945	5,400	331	9,676
1989	6,537	5,925	524	12,986
1990(est)	8,000	6,220	266	14,486
Total	$52,960	$60,872	$1,718	$115,550

* Figures reflect thousands of dollars, last three zeros left off.

YOSEMITE PARK AND CURRY COMPANY
CAPTIAL INVESTMENTS

IMPROVEMENTS TO GUEST FACILITIES

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$1,402	$1,102	$2,172	$1,769	$1,919	$2,361	$10,729

IMPROVEMENTS TO SUPPORT FACILITIES

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$1,619	$854	$775	$600	$968	$95[illegible]	$5,77[illegible]

RESTORATION OF HISTORIC STRUCTURES

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$209	$128	$722	$747	$3,120	$3,7[illegible]9	$8,635

SAFETY/ENVIRONMENTAL IMPROVEMENTS

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$19	$63	$593	$394	$128	$445	$1,642

TRANSPORTATION EQUIPMENT

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$297	$488	$135	$435	$402	$527	$2,284

TOTAL

1985	1986	1987	1988	1989	EST. 1990	TOTAL
$3,546	$2,635	$4,401	$3,945	$6,537	$8,000	$29,064

National Parks
and Conservation Association

PAUL C. PRITCHARD
President

September 6, 1990

Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands,
National Parks and Forests
308 Dirksen Senate Office Bldg.
U.S. Senate
Washington, DC 20510-6150

Dear Senator Bumpers:

Enclosed are the responses to the questions from Senators McClure and Wallop concerning concessions. We appreciated the opportunity to appear before the Subcommittee and would be pleased to provide any additional information that would be helpful to the Subcommittee.

Sincerely,

1015 Thirty-First Street, N.W., Washington, D.C. 20007-4406
Telephone (202) 944-8530 · Fax (202) 944-8535

PRINTED ON RECYCLED PAPER

Responses to Questions by Senators McClure and Wallop
By Paul Pritchard, President of NPCA

1. You seem to feel there may be windfall profits from time to time in concessions operation. Who determines windfall profits from acceptable profits? In your opinion, should the government regulate profits?

Response: At the present time, there are a number of individuals who believe that some concessioners are receiving windfall profits resulting primarily from excessively low franchise fees. The Inspector General raised serious concerns with respect to profits both in his written report and his oral testimony. Ultimately, it would be appropriate for Congress to decide if it wanted to determine windfall profits from acceptable profits. As a general matter, I do not believe the government should regulate profits but it is important that the National Park Service oversee what prices the concessioners charge for goods and services.

2. You mention the problem of low franchise fees; and I don't think that any one would argue that fees should be increased. Do you believe that fees should be increased prior to the termination date of existing contracts?

Response: I do not propose any measure that would violate a valid existing contract. Older contracts effectively block renegotiation of franchise fees through "mutual agreement" clauses. I am unaware of any case where a concessioner agreed to an increase in fees when the contract had the "mutual agreement" clause. Newer contracts do not have this clause and therefore franchise fees can be reconsidered and should be at an appropriate time.

3. On page 5 of your statement, under "Public Information," you mention that you concur with the conclusion in the 1985 report, which states "Disclosure would permit more effective public scrutiny of the rates set and activities permitted by the Park Service, as well as reduce opportunities for favoritism in establishing and administering contracts." Can you give me any specific examples of any cases where favoritism was or is being given in establishing and administering contracts?

Response: Since there is so much secrecy associated with concessioners' operations in the National Park System, there are many opportunities for favoritism. For example, when a concession makes extraordinary profits on its operations within the Park System but pays only a low franchise fee for the privilege of doing business within the System, one could say that the Park Service has favored that concessioner without suggesting anything illegal had taken place. In his testimony (see particularly pages 8-10, 12, and 13) and at various points in his written report, the Inspector General cites several cases that many would conclude involved the concessioner receiving favoritism. NPCA continues to recommend that greater information about the revenues and costs of concessions be made public because more information would serve to stimulate competition.

4. You advocate the relocation of both the National Park Service and Yosemite Park and Curry Co. housing and other non-essential facilities from the Valley, and a traffic reduction scheme, leading to the eventual phase-out of the automobile. In light of budget constraints, how would you propose funding this program?

Response: What we are advocating, and have been for some time, is that both the National Park Service and the concessioner implement the 1980 General Management Plan developed by the National Park Service. There are two major ways in which this can be funded. One is through the National Park Service construction account. Congress has been making significant additions to this account in recent years. For example, Congress added approximately $150 million to this account in the current fiscal year. In addition, the Administration has announced that it will be requesting funds in the coming year to implement portions of the Yosemite General Management Plan.

Another way in which the plan can be funded is through higher franchise fees. Given the current budget problems, I believe, and I am sure most other taxpayers agree with me, that concessioners should be paying substantially higher fees for the privilege of conducting business within the National Park System. Many individuals believe that it is outrageous that the Yosemite Park and Curry Company, for example, pays only three-quarters of one percent of gross revenues to the government in return for its monopoly in Yosemite National Park. I propose increasing the fees that concessions operations pay for the privilege of doing business within our National Park System. The resulting increased revenue should be returned to the National Park Service and could be used in funding Yosemite General Management Plan and other approved projects, including those found in resource management plans. A further use of these funds would be the purchase of outstanding possessory interests.

5. Are you advocating that the Congress should remove and relocate perfectly good housing in Yosemite before attempting to address other housing needs in the Park System? In other words, should rangers continue to live in container boxes on Channel Islands so that we can remove two employee houses from Yosemite Valley? Should rangers in Alaska be afforded plumbing for their facilities before we remove a dormitory from Yosemite Valley?

Response: I never suggested nor is it our position that the most pressing need of the Park Service is moving good housing from Yosemite. Of course, I support improved housing for rangers on the Channel Islands and in Alaska. However, I also support the implementation of the Yosemite General Management Plan and the protection of Yosemite Valley.

As noted in the previous response, Congress has provided substantial amounts of additional funding for the National Park Service construction budget. There is no reason to believe that priority housing needs cannot be met especially if there are realistic franchise fees that are returned to the National Park System.

6. You indicate that you surveyed the state park system and found that concessioners pay about 9 percent. Did your survey include questions about whether concessioners invest as they do in National Parks, or whether the facilities were state-owned and thus required no investment? Please submit your survey for the record.

Response: Our survey is attached and we are continuing to seek additional information on state concessions operations. The survey to date, however, clearly demonstrates that the federal government receives substantially less in fees than do state governments. Concessioners' fees are too low even taking into account investment that the concessioners make--especially since they also receive a possessory interest in the structures. Our survey shows what states receive in franchise fees but we continue to recommend that the Congress request a study from the Government Accounting Office to determine appropriate levels for franchise fees within the National Park System.

7. You criticize the concept of possessory interest. Last year 600,000 visitors attempted to visit Denali National Park; only 150,000 visitors were allowed into the park due to the lack of facilities. There is a rationale for applying to the private sector to build appropriate facilities and infrastructure for that park. A return on their investment would no doubt take a substantial amount of time. Would you agree that in this case granting possessory interest and other incentives would be in the best interest of the government and the American taxpayer? If not, why not?

Response: The statistics cited in this question are inaccurate. According to National Park Service records, there were 1.6 million visitors to Denali in FY 1989. We assume that this question is trying to address the issue of individuals being able to stay in the hotel inside the park boundary. The hotel is located at the edge of the park. Other facilities are located on private land just outside the park boundary and within one mile from the hotel inside the park. In the case of Denali specifically, and generally for many parks, we believe that it is preferable to locate hotels, restaurants and other related facilities outside parks so that the local communities have the opportunity to benefit from the tax revenues generated by such facilities.

8. Hasn't the preference for renewal acted as an incentive for better performance since only those rated as satisfactory concessioners get the preference? If not, please explain.

Response: The preference for renewal has only acted as an incentive for better performance if you assume the other alternative is to grant preference with no requirement for even satisfactory performance. I firmly believe that visitors would receive truly better performance if concessioners had no preference for renewal and faced the prospect of real competition at the time of renewal. Currently, there is virtually no competition at the time of contract renewal. There are not even any competing bids for most renewals. The reason for that is that potential competitors know that the existing concessioner has the preferential right to renewal guaranteed in law and all that has to be done to obtain this.is to put in a satisfactory performance. It is not surprising that the Inspector General, the General Accounting Office and many others have recommended amending the Concessions Policy Act to remove the preferential right language.

In their testimony, and throughout the the Senate hearing and a similar hearing in the House, witnesses for the concessioners repeatedly stated that it is essential for free enterprise to be the basis for park concessions. It is widely accepted that an essential element of a free enterprise system is that there be competition. Nevertheless, the concessioners rigorously defend the preferential right provision that is inherently anti-competitive and anti-free enterprise. Where else are corporations doing business with the federal government guaranteed a preferential right to renewal just for performing satisfactorily?

The law states that existing concessioners only have to perform in a satisfactory manner, not a superlative or exemplary manner, to receive a preference for renewal. Interestingly, not all concessioners portray it that way. In his testimony (pages 7-8), Mr. Maughan states: "The history of the preferential right for renewal in the statute shows that this provision was enacted as an incentive for superior performance and as a means of assuring continuity of good service to the public." This is a fundamental misstatement of the existing law and situation, where all that is required is satisfactory performance. However, if the law were changed to require superior performance, then we could expect better performance.

STATE	FRANCHISE FEE % OF GROSS	WHERE FEES GO	FEE ACCESSED
1. Alaska	9%	3% state 6% parks	re-appropriated
2. Arizona	sliding scale		
3. Arkansas	no concessions		
4. California	11%	1st $ 7 million park, rest to state	re-appropriated
5. Colorado	10%	park fund	re-appropriated
6. Georgia	8%		
7. Hawaii	no concessions		
8. Louisiana	not mandatory		
9. Maine	no fees		
10. Maryland	26%	state fund	re-appropriated
11. Massachusetts	flat fee	state fund	30% re-appropriated
12. Michigan	10%		
13. Mississippi	no concessions		
14. Missouri	no estimate		
15. New York	17%	state fund	re-appropriated
16. North Carolina	6%		
17. North Dakota	4%		
18. Ohio	18%	90% park 10% reserve	park request
19. Oregon	8%	park fund	re-appropriated
20. Pennsylvania	sliding scale	maintenance fund	park request

21. South Carolina	12%		
22. South Dakota	6%		
23. Tennessee	flat fee		
24. Texas	sliding scale	state fund	re-appropriated
25. Utah	5%	state fund	re-appropriated
26. Vermont	8%		
27. Virginia	8%	state fund	re-appropriated
28. Washington	5%	trust lands	through land acquisition
29. West Virginia	8%	state fund	re-appropriated

* Empty spaces in chart indicates segment of survey in progress

STATE	ARE PROFITS PUBLIC INFO	POSSESSORY INTEREST	PREFERENTIAL RIGHT
1. Alaska	probably	no	discretionary
2. Arizona			
3. Arkansas			
4. California	no	no	no
5. Colorado	yes	no	discretionary
6. Georgia			
7. Hawaii			
8. Louisiana			
9. Maine			
10. Maryland	yes	no	no
11. Massachusetts	probably	no	no
12. Michigan			
13. Mississippi			
14. Missouri			
15. New York	no	no	no
16. North Carolina			
17. North Dakota			
18. Ohio	yes	no	no
19. Oregon	yes	no	discretionary
20. Pennsylvania	yes	no	no
21. South Carolina			
22. South Dakota			
23. Tennessee			

24. Texas	yes	no	discretionary
25. Utah	no	some	discretionary
26. Vermont			
27. Virginia	yes	no	no
28. Washington	yes	yes	discretionary
29. West Virginia	no	no, some exceptions	no

* Empty spaces in chart indicates segment of survey in progress

1990 SEP 13 [illegible] 3 09

THE WILDERNESS SOCIETY

GEORGE T. FRAMPTON, JR.
PRESIDENT

September 10, 1990

The Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands, National Parks and Forests
United States Senate
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

This is in response to your letter, dated August 6, 1990, enclosing supplemental questions by Senators McClure and Wallop regarding The Wilderness Society's testimony on national park concessions policy.

1. **The Wilderness Society seems to be involved in something of a campaign against Yosemite Park & Curry Co., which you have continued here today. There have been press reports that the Wilderness Society has been interested in leading some sort of coalition to operate the concessions in Yosemite National Park. If Secretary Lujan's policies were adopted, would changing the value of assets to book value from sound value benefit your organization in a potential buy-out of Yosemite's operation or other operations?**

   The Wilderness Society has been involved, with others, in the organization of a separate non-profit organization, to be directed by a broad based board of directors and advisory committee including environmentalists, park and concession experts, and business people, that may make a bid for all or part of the Yosemite concessions contract. The Wilderness Society will not make any such bid, nor will any financial benefit accrue to The Society from the bid or bids made by the new non-profit or any other group or corporation.

900 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006-2596
(202) 833-2300

Printed on recycled paper

If, today, it were determined to value Curry Company's possessory interest at book value, rather than sound value, competition would likely be enhanced in that it would be less expensive for any competitor - profit or non-profit - to consider making a competitive bid.

However, Secretary Lujan has proposed that any changes in concessions policy apply to new concession contracts, or upon renewal of existing contracts. As a consequence, the change from "sound value" to "book value" would apply not to the Curry Company, but to the recipient of the next Yosemite contract. As a result, a successful competitor for all or part of the present Curry contract would be required to pay "sound value" for Curry's possessory interest, but would itself only be entitled to "book value" compensation upon eventual termination or transfer of its contract. As a result, there is actually a strong financial disincentive for a prospective bidder to support the change in methodology we advocate.

2. **On page 3 of your statement, you mention thirteen items which have not been accomplished in accordance with the General Management Plan. This seems to imply that it is a failure of the concession policy. Is it your view that implementing a General Management Plan is the responsibility of the concessioner? What has the Park Service specifically done to accomplish action on the above-mentioned thirteen items?**

Responsibility for implementation of the General Management Plan rests squarely with the National Park Service. To our knowledge, the National Park Service has done little to accomplish action on the 13 items you reference. The listed GMP actions should have been requested by the NPS. The fact that they were not, points out a number of problems. In our view, one of these is that present concessions law and policy constrains the National Park Service from requiring actions on the part of the concessioner with which the concessioner disagrees.

3. **Also on the same page, you mention that there is an attachment that lists new and expanded Yosemite concessionaires profit centers established since 1980 but not specifically authorized by the General Management Plan. As we agree that implementing the General Management Plan is the responsibility of the National Park Service, is it not true that each of the items you have listed was either authorized by the National Park Service, was allowed for within the General Management Plan, or existed prior to the General Management Plan; in fact, is it not true that the number of concessions operations has decreased since 1980?**

All of the activities of the concessioner are authorized by the National Park Service, so given the "either/or" construction of the question, the answer to the first half of it is "yes." However, it is not true that concession operations have decreased since 1980. Two measures are most illustrative. The first is accommodations, which according to the GMP were to be reduced in the

Yosemite Valley by 268 units. They have not been reduced, but rather have increased since adoption of the GMP. The second measure is gross revenue, which likewise has increased dramatically since 1980.

4. **You mention on page 6 that in those instances where the U.S. wants a facility built, it is better for the Congress to appropriate money for that purpose than continue granting compensable property interest to private properties in the National Parks. Since we have been talking about Yosemite National Park, how long do you think it would take the government to repair the Wawona Hotel in light of the park priorities and budget constraints? How long do you think it would take the private sector to repair the Wawona Hotel if they were given some incentive to accomplish the task? In this scenario, is the government better served by the government or the private sector?**

If the goal is merely to see that the Wawona Hotel is repaired, this can certainly be accomplished by granting the private sector a suitable incentive to perform the task. The question really becomes what is defined as a suitable private sector incentive. In our view, the granting of a compensable property interest valued at "sound value" as an incentive for investment does not represent good public policy. Such a policy discourages competition by increasing the cost of a buy-out, and thereby serves to institutionalize incumbent contractors. Furthermore, it has become common practice for concessionaires to make such investments in facilities in-lieu of paying larger franchise fees. As a consequence, concessionaires have been allowed to enhance their own compensable property interest in-lieu of returning appropriate fees to the United States. This scenario is not in the best interest of the United States.

As the NPS Concessions Task Force report stated, an increase in appropriated funds may be needed to finance projects and tasks previously financed by the concessioner in-lieu of fees. We agree with that assessment, and strongly believe that as needs for funding such projects as repair of the Wawona Hotel become known to the American People and the Congress, they will get the necessary priority attention they deserve in the appropriations process.

However, our recommendation goes further. Specifically, we have recommended the establishment of a service-wide account, into which concession fee revenue would be deposited. This service-wide account would be allocable, in part, to maintenance and repair of government owned structures occupied by concession operations, such as the Wawona Hotel. This account could be enhanced with appropriated funds as necessary. Establishment of such a program would serve the public interest far better than the present practice of granting a compensable property interest and reduced fees in exchange for capital investment on the part of the contractor.

5. **To your knowledge, has the concessioner in Yosemite National Park taken any action to implement a portion or portions of the General Management Plan? Please describe these actions.**

> Certain concessioner functions have been removed from Yosemite Valley, namely reservations and laundry services, and certain warehousing functions. While these were positive steps, it is generally assumed they would not have been taken had they been financially disadvantageous for the concessioner to do so. Unfortunately, transfer of functions has not been accompanied by a decrease in the number of major concessioner structures in Yosemite Valley as was the intent of the GMP. Other functions were moved into the vacated space.

We appreciate the opportunity to respond to these supplemental questions.

Sincerely,

George T Frampton Jr

George T. Frampton, Jr.

GTF:scw

APPENDIX II

Additional Material Submitted for the Record

STROM THURMOND
SOUTH CAROLINA
COMMITTEES

ARMED SERVICES
JUDICIARY
VETERANS' AFFAIRS
LABOR AND HUMAN RESOURCES

United States Senate
WASHINGTON, DC 20510-4001

July 24, 1990

Senator Dale Bumpers, Chairman
Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
308 Dirksen
Washington, D.C. 20510

Dear Dale:

Enclosed is a copy of a letter I recently received from Mr. George E. Campsen , Jr. which expresses his strong concerns regarding proposals to change the role of the private concessionaire in the National Parks system.

As Chairman of the Subcommittee on Public Lands, National Parks, and Forests, which is currently considering this issue, I ask that you give Mr. Campsen's views careful consideration.

Thank you for your consideration of this request.

With kindest regards and best wishes,

Sincerely,

Strom

Strom Thurmond

ST/f
Enclosure

Fort Sumter
TOURS
INCORPORATED

Fort Sumter
Tour

Harbor &
Naval Base
Tour

Dinner &
Harbor Cruise

205 King Street
Suite 204
Charleston
SC 29401
803-722-1691

July 16, 1990

Honorable Strom Thurmond
Senator from South Carolina
217 Russell Senate Office Building
Washington, DC 20510

Dear Strom:

For at least 70 years in this country private business men, known as concessionaires, have provided the goods and services for visitors to our National Parks and Monuments. With very few exceptions. the system works well. Concessions are private, tax paying businesses which are closely regulated by the National Park Service. They offer only those services the Service determines are needed, and at a price the Service approves and finds to be reasonable. The Service also regulates and controls the environmental impact of every concession operation, to make sure it is consistant with public interest and park objectives.

This successful partnership of government supervision and private initiative, was created by Congress, and is in the best tradition of a free market economy , and in the public interest, should not be diminished or destroyed. Each partner does what it does best -- the Park Service protects the parks and private business provides services as directed by the Service. The overwhelming results has been outstanding services to the visiting public at reasonable and competive prices.

The historic relationship between the private concessionaire and the Park Service evolved over a period of 50 years of trial and error, and based on this experience and after extensive hearings, etc, the Congress in 1965 passed (PL) 89-249, the Concessions Policy Act. This act gave statutory status to concessions policy and procedures which, over time, were found to be productive, and is the expressed will of the Congress.

The Congress created the National Park Service and delegated certain authority for the operation thereof, to the Secretary of Interior. With all due respect, it appears that Secretary Manuel Lujan, is leading a movement to drastically change, if not destroy, the role of the private concessionaire in our National Parks. To assist in this mission, he appointed a "Task Force" to furnish a report and also sought assistance from the Inspector General. The apparant objective is an overall assault upon the system, but more particularly, a drive to control the "profit opportunity" of concessionaires through inflated franchise fees.

A review of the various committee and conference reports, testimony, etc., involved with the passage of (PL) 89-249, clearly demonstrates that it was never the intention of Congress that the Service regulate and control the Profit opportunity of concessionaires. It was intended that every charge concessionaires make to the public for goods and services, be reasonable and competitive, and for that reason it was specifically mandated that all prices or rates be approved by the Service. As a matter of fact, the act also specifically states that franchise fees, which are paid by concessionaires to the Service, should not be used as a revenue producing source, and such fees shall be subordinate to good service at competitive prices, etc.

Our National Park and Monument system is a model for the world, and I urge you to become very knowledgeable of what is presently developing, and use your influence to help prevent unreasonable restraints upon private businesses operating within our National Parks and Monuments.

Surely, the internal collapse of worldwide Communism should teach us that the free enterprise, profit motivated business climate, is the only successful system. After the Service has assured reasonable prices through rate approval, etc, it is hard to envision how the system would be improved, by diminishing the "Profit Opportunity" of private businessmen. If bureaucratic regulation of profit opportunity is not contrary to public policy - it should be.

Page Three
Honorable Strom Thurmond

I really don't know how it has happened, but to many in position of authority - unfortunately "Profit" is a bad word, and signifies an evil empire of entrepreneurs.... This is most regretable and when that view prevails - we will surely follow the path of Eastern Europe to economic chaos. In order for any salaries and taxes to be paid, or anything good economically to happen - it is first necessary that some private entrepreneur, be given an opportunity to make honest profit...

Hearings are scheduled before the Senate Subcommittee on public lands, National Parks, etc. on July 25th. Senator Dale Bumpers (D-AR) is Chairman. This is a matter of great importance - please help!!!

Faithfully yours,

George

George E. Campsen, Jr.

GECJr/ald

Response to George T. Frampton, Jr., from letter signed by Ed Hardy, Yosemite Park and Curry Company, July 30, 1990.

Analysis of Wilderness Society's Attachment 1

1. Camp Curry pizza and ice cream stand. Previously used as a coffee shop, chicken stand, store room and bar. Converted to serve pizza and ice cream. Approved by National Park Service Yosemite Superintendent Bob Binneweis.

2. Raft rental. Merced River floating existed since before the General Management Plan and was authorized on page 22 of the GMP. Raft rental was approved by Supt. Binneweis.

3. Wine tasting, gourmet and music festivals. These events are held midweek in off-season months, inside The Ahwahnee. Approved by Supt. Binneweis. The music program was discontinued in 1987.

4. Photo finishing center. Existing space. Approved by Supt. Binneweis.

5. Video rental. Contained within the photo finishing center, this service is available to park employees only. Approved by Supt. Binneweis.

6. Tobacco shop. There is no "tobacco shop" in Yosemite Valley. Most likely, this refers to the "Sweet Shop" at The Ahwahnee. This ice cream fountain was converted to sell sundries in the identical space. Approved by Supt. Binneweis.

7. Camp store at ice rink. Existing space. Authorized on page 40 of the GMP. Approved by Supt. Binneweis.

8. Lunch service at Wawona Golf Pro Shop. Existed prior to GMP. No changes were identified for this location in the GMP.

9. Tour sales outlet. Existed prior to the GMP. Consistent with GMP concepts of increasing use of bus tours and interpretive services. Approved by Supt. Binneweis.

10. Fudge counter. Existing space. Space previously used for retail sales and display. Approved by Supt. Binneweis.

11. Wawona Saturday night barbecue. Existed prior to the GMP. Reestablished in the early 1980s. Approved by Supt. Binneweis.

12. New Accommodations - 21 total. Existing space. Conversion of a bar to two hotel rooms at The Ahwahnee. Remainder are existing guest rooms which were subdivided or employee accommodations which were previously used as guest accommodations and reconverted to guest use. When 20 Housekeeping Camp units are removed following the end of this season, the number of hotel rooms in Yosemite Valley will match the original GMP figures. Conversion of rooms were approved by Supt. Binneweis and Supt.

Morehead.

13. Moonlight tram tours. Existed prior to the GMP. Consistent with GMP goal to encourage use of tour buses and expand interpretation.

14. Fee for Mariposa Grove Tour. Approved by Supt. Binneweis in 1983, after federal funding for the tour had been lost. The federal government decided that users should pay for this service.

15. Vending machines. Placement of vending machines in additional locations was requested and authorized by the Park Service to aid visitors. Vending services have existed prior to GMP.

16. Retail sales at Tuolumne Meadows Lodge. Existed prior to GMP. Expanded selection was provided within existing space.

The attachment also charges that Yosemite concessioner profit centers have been expanded since 1980. Information regarding each of the items is listed here.

1. Marketing, catering conferences (weddings, conventions, tours). Yosemite's marketing activities and catering services have existed very similarly for many years. The Curry Co. has reduced allocations of room blocks for social groups and tour groups, since 1980. Over the years, the conference season has been reduced to October through April. Use of facilities by conference groups has increased moderately, although the opportunities for conferences have not been expanded.

2. Bicycle rentals. The same two locations rent bikes as before the GMP. Bike inventory has increased, though since 1988 bike rental has declined as more people bring their own bikes. The GMP calls for expansion of bike trails to get people out of their cars.

3. Cross-country ski rental. Existed many years prior to implementation of GMP. Ski services were moved from Crane Flat and Summit Meadow to Badger Pass. THis resulted in less development, less impact upon the other areas and more consistent and improved cross-country conditions and services. The GMP anticipated expanded cross-country skiing. Approved by National Park Service Yosemite Superintendent Bob Binneweis.

4. Mariposa Grove Store. A portable building was constructed to replace the previously existing store which had been destroyed by a fallen tree. Approved by Supt. Binneweis.

5. Bracebridge Dinner (increased from 3 to 5 dinners). Approved by Supt. Binneweis, to relieve public frustration at not being able to attend this popular historic event.

6. Yosemite Lodge (expanded restaurant, relocated bar, expanded retail and snack sales added to pool). Restaurant and bar changes were approved by Supt. Binneweis to shorten waits to dine. Retail space is about the same as before. Pool snack sales existed prior to GMP.

7. Snack sales added to White Wolf restaurant. Not so. Similar services existed before the GMP.

8. Breakfast service added at Village Grill. This replaced breakfast service at The Loft restaurant which is also in Yosemite Village, about 100 yards away from the Grill.

LAW OFFICES
BEVERIDGE & DIAMOND, P. C.
SUITE 700
1350 I STREET, N. W.
WASHINGTON, D. C. 20005
(202) 789-6000
TELECOPIER (202) 789-6190
TELEX 3725538 BEVDIA WSH

HENRY L. DIAMOND
ALBERT J. BEVERIDGE, III
HAROLD HIMMELMAN
STEPHEN L. GORDON
JONATHAN Z. CANNON
ALEXANDER W. SIERCK
JOHN H. HANSON
ANDREW E. MISHKIN
WILLIAM N. HEDEMAN, JR.
CYNTHIA A. LEWIS
KARL S. BOURDEAU
JOHN S. GUTTMANN
DON G. SCROGGIN
GARY J. SMITH
BENJAMIN F. WILSON
ROBERT BRAGER
RICHARD S. DAVIS
THOMAS RICHICHI
J. DANIEL BERRY
DEAN M. CANNON
VIRGINIA S. ALBRECHT
BRIAN H. [illegible]
THOMAS R. [illegible]*
DONALD J. PATTERSON, JR.
PAUL E. SHORB, III

OF COUNSEL
JOHN FRENCH III

SPECIAL COUNSEL
A. JAMES BARNES

BRENDA MALLORY
MARK A. TURCO
THOMAS C. JACKSON
KATHRYN E. SZMUSZKOVICZ
HAROLD L. SEGALL
KENNETH S. KAUFMAN
CHARLES F. GAUVIN
CHRISTOPHER W. MAHONEY
STEVEN M. JAWETZ
DEVARIESTE CURRY
DAVID M. FRIEDLAND
ALISON A. KERESTER
SY GRUZA*
SUSAN KOROSTOFF ORUN
AARON H. GOLDBERG
DEBORAH R. GUNN
DEANNE L. AYERS-HOWARD*
SUSAN H. EPHRON
SHELLEY V. LUCAS
KAREN C. KELLER*
JANE S. CONVERSE
DAVID A. HARRIS
ALAN H. McCONNELL
NANCY D. TAMMI
ELIZABETH S. POLINER
TERRY F. QUILL*
DAVID G. ISAACS*
DIANE L. GILDERSLEEVE
KATHLEEN ROGERS*
OLGA B. MORELAND*
CRAIG B. KRAVIT*
DAVID A. McKAY*
MARGARET A. LATTIN*
DAVID S. LANGER*
MARGUERITE A. CEPHAS*
CARRIE A. MINEART*

*NOT ADMITTED IN D. C.

BEVERIDGE & DIAMOND
SUITE 1705
TWO EMBARCADERO CENTER
SAN FRANCISCO, CA 94111
(415) 397-0100

SUITE 1202
101 PARK AVENUE
NEW YORK, N. Y. 10178
(212) 557-3366

BEVERIDGE & DIAMOND
SUITE 400
ONE BRIDGE PLAZA
FORT LEE, N. J. 07024
(201) 585-8163

WRITER'S DIRECT DIAL NUMBER
(202) 789-6010

August 2, 1990

The Honorable Malcolm Wallop
United States Senate
237 Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Wallop:

In response to your request, I am pleased to provide herewith an analysis of the hotel and related industry profitability standards. This analysis shows that the Dun & Bradstreet standard used by the Inspector General of the Department of Interior in his report is not the most appropriate benchmark against which to measure profitability in concession operations. Standards developed by other reputable hotel analysts more closely approximate a real world situation.

The Dun & Bradstreet index includes a number of operations which are unlike park concessions. For example, franchisers which have little or no capital investment, and therefore expect a very small return on gross, are included in the Dun & Bradstreet index. Also included are other properties which are primarily long-term real estate investments that can live with very small returns on gross and are inappropriately compared to national park concessioners.

Most important, the Inspector General's position that any profits above a median should be taken is a confiscatory one. It will promote mediocrity and is not needed where prices and service to the public are carefully regulated.

With appreciation for your leadership in this issue, I am

Sincerely,

Henry L. Diamond

HLD/lmb
Enclosure
O:\0130\0359\ltr\hld.20

DEPARTMENT OF INTERIOR USE OF DUN & BRADSTREET MEDIAN PROFITABILITY INDEX IS MISLEADING AND INAPPROPRIATE

The use of the Dun & Bradstreet ("D&B") median profitability figure by the National Park Service to calculate franchise fees, which was employed by the Inspector General ("IG") in his report, is unfair and misleading.

First, IG's concept of confiscating all profits above a median is very poor policy and not in accordance with law. Limiting a concessioner's return equal to an industry-wide median return reduces all incentive for good management, amounts to a 100 percent tax on profits above the median, and is a confiscatory taking of property without compensation. It will ultimately result in lower revenue to the government, since an enterprise which doesn't make profits doesn't pay income taxes. This will have a far greater negative impact on federal government funding than the positive effect of raising franchise fees.

Second, the methodology is flawed because there can be vast differences in the kinds of businesses included in the D&B data and the kinds of operations in national parks. Many of the businesses in D&B's database are really in the franchise/royalty business, not operators (e.g., Marriott, Ramada, etc.). Because of the vast differences in ownership structures, financing bases, income tax provisions, stages of corporate development, and accounting practices, comparison of profitability between NPS concessioners and industry norms are virtually meaningless.

Here are some specific flaws in the use of the D&B median:

1. Different companies have different debt and interest expense requirements which can have major impacts on operating results. Using D&B's return on sales is inappropriate because D&B measures profit after depreciation and interest expense. Differences in depreciation practices and financing decisions can produce widely different returns for comparable companies, or similar returns for very different companies. Franchise fees should not be dependent on accounting practices or financing decisions by investors.

2. Many hotel properties are speculative ventures relying on long-term land and asset appreciation to provide a satisfactory return for investors. They are often content to break-even and even incur losses in hopes of realizing a significant gain upon sale of the property and/or its assets. The use of an index summarizing only operating results does not give appropriate consideration to the potential investor benefits from owning an appreciating asset with unrestricted earnings potential and with unrestricted rights to sell, expand or change the nature of its operations.

3. Diversified businesses often use tax losses incurred from one line of business to offset earnings from other lines, thus lowering their overall income tax liability. The reporting standards for concessioners require that concession operations be reported on a stand-alone basis. This results in inappropriate

comparisons when using broad-based Standard Industry Code ("SIC") and other data such as that used by D&B.

In using any index, care must be taken that there is real comparability. For example:

4. (a) The age of facilities in the national parks results in low book values since building in the park is generally restricted. By contrast, new properties will have more current asset costs which lowers the return on assets when compared to the same measure used by national park concessioners.

(b) Using return on equity as a comparison is inappropriate because dividend policies and the amount of debt vary widely. Franchise fees should not be dependent upon internal company financing and dividend policy decisions.

(c) The past cannot always predict the future. The last decade has seen a tremendous expansion in the lodging industry. It is generally conceded that the industry is over-built, which has resulted in a significant drop in occupancy rates. The 1978 to 1982 average occupancy of 69.5% dropped to 66.2% from 1983 to 1987. The over-supply of rooms resulted in lower room rates, causing profits to be at unusually low levels. The depreciation and interest impacts of this financed construction, when coupled with the lower room rates forced by the expanding capacity, result in data not comparable to national park concession businesses.

Although we disagree with the concept of regulating profits as contrary to Congressional intent, if the NPS needs a bench mark to aid in concession management we believe the Pannell, Kerr, Forster survey of specific properties is much more reliable than D&B's industry norms. The PKF survey of 1,000 actual hotel operators mitigates the problems described above, and provides a more accurate comparison. In addition, the survey compares the results by geographic location, size, type, and age of properties, and provides other meaningful data. Other surveys of this type may be available and appropriate.

O:\0130\0139\misc\hld.10

GFM
GREYHOUND FOOD MANAGEMENT, INC.
Joseph K. Fassler
President and
Chief Operating Officer

August 9, 1990

The Honorable Dale Bumpers
United States Senate
229 Dirksen Building
Washington, D.C. 20510

Dear Senator Bumpers:

First off, let me thank you again for attending our National Restaurant Association breakfast meeting. Your candor is most refreshing. I especially enjoyed it because I saw a lot of Carroll in you. Be certain that I truly respect Carroll for his wisdom and, just as important, his personality.

I mentioned to you that I think your Senate Subcommittee's position on Secretary Lujan's National Park Concession Policy changes are based on insufficient facts. I attest that Rex Maughan's testimony in front of your subcommittee on July 31 accurately describes the facts in their entirety. I would appreciate it if you would closely review a transcript of Rex's remarks, which I have enclosed for you.

By way of example, I can best explain the concessionaire's position by explaining my own company's position as we too are a national park concessionaire in Glacier National Park. My contract states that I pay 1.5% franchise fee and that I commit 7% of my annual sales for capital and maintenance improvements for the 25 year period I have the contract. This is what the contract states. Now for the reality. Each year since the inception of the contract, I have spent not less than approximately 15% of my annual revenues for capital and maintenance. As a matter of fact, in 1990 I committed and will spend 25% of my annual revenue for capital and maintenance. If I did not spend these huge amounts each year, the Glacier Park facilities could not be opened or operated safely for the public's use. Instead the government would have had to allocate these monies which would be necessary for the improvements as they presently do for the Yellowstone contract. Unfortunately, Secretary Lujan did not tell your committee or the press this side of reality.

Greyhound Tower • Phoenix, Arizona 85077

When a bank or a company makes a loan to anyone, they require some form of collateral. The Greyhound Dial Corporation continuously gives money to me to invest in Glacier National Park because, based on my contract, I acquire a possessory interest in my investment. This is a form of collateral. Preferential right does not automatically give me a renewal of the contract. What it does do is it encourages me to be proactive and do more than what is expected in the contract in order to be a satisfactory operator. Hence, that is why we spend twice as much in capital and maintenance than the contract states. It also allows others to compete for the contract at the expiration of the contract. Preferential right does give me, if I am a satisfactory operator, the ability tot op the best offer of a competitor.

I am sure Congress studied and tested different ways to manage the partnership between government and the private sector in relation to the National Parks. The fruit of such studies is Public Law 89-249. I would hope that an appointed position such as secretary of the interior could not and would not be allowed to deface or tamper with the public law. As we have all read Secretary Lujan's continuous remarks to the press, he indicates that he can make his changes without regard for Public Law 89-249.

In closing, Public Law 89-249 has worked well for both the government and the private sector since 1965. The franchise fees are only a very small part of the private sector's investment in the National Parks. The government should be extremely happy about that because the larger the franchise fee, the smaller the private sector's investment in the Parks and the more the government would have to allocate, since the private sector would have little or no collateral to support the investment. Finally, Public Law 89-249 is the law and no one has the right to violate it, not even the secretary of the interior.

Thank you for listening. I enjoyed meeting you.

Sincerely,

Sassler

dsw

EARTH SKILLS

August 13, 1990

Senator Dale Bumpers
Energy & Natural Resources Committee
229 Dirkson Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

Re: Concession policies of U.S. Forest Service etc.

I understand your subcommittee may be investigating the concession policies with the U.S. Forest Service, National Park Service and other Federal agencies.

I operate a school which teaches nature and wilderness programs for children and adults. Many of our classes are on Federal lands. I fear that if concession rates were substantially increased, our program would become prohibitively expensive. When you consider these policies further, I urge that your committee recognize there are many kinds of "concessions" operating on public land and educational programs should definitely not be included in a category with restaurants, hotels and even purely recreational programs.

If you keep my name on a mailing list, I would appreciate the opportunity to provide more detailed comments at the appropriate time. Thank you.

Sincerely,

Jim Lowery
Owner, Earth Skills

Tracking • Wilderness Survival • Nature Awareness
570 Shepard Street San Pedro, CA 90731 213/833-4249

CONFERENCE OF
National Park
Concessioners
ESTABLISHED 1917

P.O. Box 29041
Phoenix, AZ 85038
(602) 967-6006

Officers
Rex G. Maughan
Conference Chairman
Edward C. Hardy
Conference Vice Chairma
Garner B. Hanson
Secretary Treasurer
Allan T. Howe
Washington Representat

Board of Directors
Rex G. Maughan
Forever Resorts, Inc.
Edward C. Hardy
Yosemite Park & Curry Company
Garner B. Hanson
National Park Concessions, Inc.
Al Earley
Del Webb Recreational Properties, Inc.
George Campsen, Jr.
Fort Sumter Tours, Inc.
Richard O. "Dick" Buc
Guest Services, Inc.
Terry Povah
Hamilton Stores, Inc.
Tom Mack
Landmark Services Tourmobile, Inc.
Kay Steuerwald
Mount Rushmore Mountain Company, Inc.
Phyllis O'Connell
Parkway Inn, Inc.
Stephen W. Tedder
TW Recreational Services, Inc.

August 1, 1990

The Honorable Dale L. Bumpers
Chairman
Senate SubCommittee on Public Lands,
National Parks & Forests
Room 308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

On behalf of the Conference of National Park Concessioners, I want to thank you for inviting Mr. Garner Hanson and myself to appear and testify before your committee on July 31 concerning the Department of Interior's Inspector General's Report and the Task Force Report on concessions policies, and Secretary Lujan's recommendations regarding the same.

I regret very much that there may have been some misunderstanding regarding one of my answers to a question. I certainly hope that in my heated attempt to explain my feelings that I did not offend you, Tom Williams or anyone else at the Hearing. I apologize if that was the case, although that was not my intention. Sometimes in quick replies to questions my words may not always convey the correct meaning. Even though we may have some disagreements over the Secretary's proposals, I am sure we agree on many more points. We want to emphasize those areas of agreement and strive to solve any differences amicably.

We look forward to working with your subcommittee and trust that nothing has transpired to detract from your fair consideration of our views as explained in our testimony.

Thank you for your consideration.

Sincerely,

Rex G. Maughan

Rex Maughan